

STATE OF IDAHO)
)ss.
County of Ada)

I, WILLIAM H. THOMAS, being first duly sworn on oath, depose and say:


Attached are true and correct copies of the following documents referred to in Plaintiffs'

Statement of Undisputed Facts:

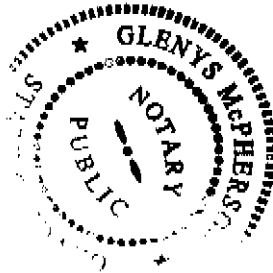
Exhibit:

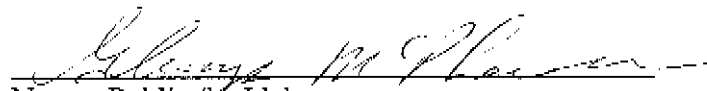
1. Excerpts from 5/4/04 Deposition of Marvin Masteller;
2. Excerpts from 1/17/02 Deposition of Jeffery P. Clevenger;
3. Excerpts from 1/30/02 Deposition of Marilyn J. Craig;
4. Excerpts from 7/12/02 Deposition of Alan Garcia;
5. Excerpts from 1//8/02 Deposition of Michael B. Hinckley;
6. Excerpts from 1/31/02 Deposition of Jacqueline T. Haldun;
7. Excerpts from 1/18/02 Deposition of Timothy C. Kaufmann;
8. Excerpts from 1/25/02 Deposition of Ryan Keen;
9. Excerpts from 1/31/02 Deposition of Linda Lee;
10. Excerpts from 2/7/02 Deposition of Isaac Moffett;
11. Excerpts from 1/9/02 Deposition of Jeffrey Parrish;
12. Excerpts from 5/4/04 Deposition of Michele Saari;
13. Excerpts from 4/29/04 Deposition of David Kestner;
14. Excerpts from 4/28/04 Deposition of Rickey Ferrara;

15. Excerpts from 3/21/02 Deposition of Laura Anderson;
16. Excerpts from Deposition 5/3/04 of David Thom;
17. Excerpts from 4/14/04 Deposition of Kevin Henderson;
18. Excerpts from 4/13/04 Deposition of Rory Kip DeRouen; and
19. Excerpts from 2/18/02 Deposition of Kimberly Smith.


William H. Thomas

Subscribed and sworn to before me this 16th day of July, 2004.



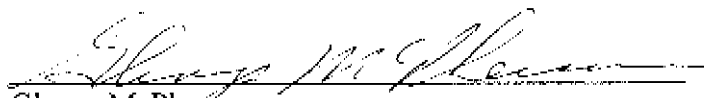

Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 11/7/06

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July, 2004, a true and correct copy of the foregoing instrument was served upon opposing counsel as indicated below:

Kim J. Dockstader
Gregory C. Tollefson
STOEL RIVES LLP
101 S. Capitol Blvd., Suite 1900
Boise, ID 83702-5958

☐ Via Hand Delivery
☐ Via Facsimile 389-9040
☒ Via U. S. Mail


Glenys McPherson



1 A No. It was salary.
 2 Q Okay. Was it salary the entire time you
 3 were there?
 4 A No. It was salaried up through the 1999,
 5 so it was '98, when I started, through 1999. It was
 6 salary, plus bonus and commission.
 7 Q And commission. Okay. And at some point
 8 that changed?
 9 A It changed starting in 19- -- Or excuse
 10 me. In the year 2000.
 11 Q So did you not --
 12 A And let me clarify that.
 13 Q Sure. Go ahead.
 14 A I believe it was -- I mean, I'm not saying
 15 that the cutoff was exact. I mean, I just remember
 16 that it happened. I don't recall the exact date
 17 that it happened. I'm not sure if it was
 18 January 1st or January 17th or -- but at some point
 19 in that time frame they switched me from a salaried
 20 position to an hourly position.
 21 Q Okay. I see the company's records show
 22 that February 18th of 2000 was the last day that you
 23 worked for Micron. Does that sound correct to you?
 24 A That sounds -- sounds correct.
 25 Q Based upon that date, can you give me a

1 sense of how long you think you were an hour -- you
 2 had to start keeping -- Let me rephrase that. Based
 3 upon that date of February 18th, 2000, can you give
 4 me a sense of approximately how long you were an
 5 hourly employee?
 6 A I would say roughly -- I'd say roughly
 7 seven to eight weeks, maybe, or maybe not -- I don't
 8 know. Maybe six to seven weeks. I don't know the
 9 exact date. Six to seven would be a rough estimate.
 10 Q So sometime in either November or perhaps
 11 December of 1999 might have been when you were
 12 switched over to an hourly employee?
 13 A It might have been January.
 14 Q It might have been January?
 15 A I'm not sure.
 16 Q Prior to that switch did you have to keep
 17 track of your time in any way?
 18 A The only thing we were required to do was,
 19 if I was taking vacation time or anything --
 20 vacation time or if I was sick, then I would have to
 21 record that information so that they could keep
 22 track of it.
 23 Q And do you remember how you were notified
 24 that you were being changed from a salary to an
 25 hourly employee? Was that an e-mail or did your

1 supervisor tell you, or --
 2 A I believe my supervisor told me, and I
 3 believe they had some forms to fill out, basically
 4 recognizing -- 'cause I then calculated my hourly
 5 rate, so they had something that said what my hourly
 6 rate would be.
 7 Q Do you remember what they calculated your
 8 hourly rate to be?
 9 A I don't remember the exact amount, but I
 10 know they based it on my base salary, dividing it
 11 out by the number of hours if you were to work on a
 12 40-hour work week, so I believe you divide by 2080,
 13 I believe it is.
 14 Q So after that point in which you were
 15 informed that you were going to be an hourly
 16 employee, were you told anything about how to keep
 17 track of your time?
 18 A Yes. They showed us how to keep the
 19 electronic time card that they had for us, so they
 20 showed us how to use it.
 21 Q Do you recall whether -- Was that on the
 22 me@Micron timekeeping system? Do you remember that?
 23 A What was it called?
 24 Q Me@Micronpc.
 25 A I can't remember what they called it.

1 Q Tell me what you do remember about how you
 2 kept track of the time. Did you have to put in a
 3 start time and a stop time?
 4 A Yes.
 5 Q And for the period that you did have to
 6 start keeping track of your time, did you accurately
 7 record the time that you started and stopped work?
 8 A No, I did not.
 9 Q Okay. And why did you not do that?
 10 A The reason I did not do that is, it would
 11 have limited my number of hours I could work, and I
 12 needed to sustain my income level. Therefore, I did
 13 not accurately record the number of hours, because I
 14 worked more than eight hours a day in order to
 15 achieve the level of income that I had attained.
 16 Q Okay. So if you had accurately recorded
 17 the time that you started and stopped work, why
 18 would that have -- why would doing that have limited
 19 the number of hours that you could work?
 20 A Because they did not authorize overtime.
 21 Q Okay.
 22 A They said that you could work overtime,
 23 but you're not going to be paid for it because we're
 24 not authorizing any more overtime.
 25 Q You're referring to they. Can you tell me

1 A I would probably say each day on average that I
2 worked at Micron, I averaged between nine and ten and a
3 half hours of work, on average, a day. So, if you would
4 add that up for that time, I don't know how much that
5 is.

6 Q So is it fair to say typically you worked nine
7 to ten hours a day?

8 A Typically. And sometimes in the busy seasons
9 it was, of course, much more. I remember a time when
10 they wouldn't let us leave for lunch and they would
11 bring pizzas in for -- every day for, I don't know how
12 long, where we actually got sick of eating pizza. And
13 that's -- those times just added up more. Those days
14 were really long.

15 Q The days when you worked through lunch?

16 A (Inaudible response.)

17 Q Some of the days when you worked nine to ten
18 hours, did you actually record in the computer system
19 nine or ten hours?

20 A As my memory serves me, after -- after it was
21 ingrained in my head and my contemporary's head that you
22 didn't really do that and if you wanted to work and
23 succeed here, you recorded what they wanted you to
24 record up to 40 hours. If they said you could do 45
25 hours, then you could put that in because you worked

105

1 that, but over that you wouldn't record it.

2 Q And is it fair to say that that was a -- you
3 told me no one ever specifically told you not to record
4 all the time that you worked, but that was more of what
5 you inferred or how do you characterize that?

6 A Yeah, it was like you just -- you feel it.
7 It's the way that the people worked there. It's what
8 they say. It's what your colleagues say. God, I've
9 been here 10 hours. I'm getting tired, but I've got to
10 make this last sale.

11 It was a numbers game. We had to produce
12 numbers. So it was a feeling that, you know, if you're
13 not going to be here and put this overtime in, why are
14 you even here for. You would be ostracized.

15 Q You would be ostracized if you didn't work the
16 same hours that everybody else was working; is that what
17 you're telling me?

18 A You would be ostracized, I felt, if you didn't
19 stay and put in more than a regular eight hour shift.
20 You needed to put in extra. The company was always
21 competing against Dell and Gateway. We needed to be
22 there or we weren't going to be there.

23 Q You just gave an example of somebody saying
24 I've been here 10 hours today or I've got to finish this
25 sale or something.

106

1 A Um-hum.

2 Q How would you know whether one of your
3 coworkers -- one of the other sales reps actually did or
4 didn't record all of the time that they worked into the
5 system?

6 MR. THOMAS: Objection to the form of the question;
7 foundation.

8 THE WITNESS: I have no idea what they would
9 record -- physically record, but I --

10 BY MR. TOLLEFSON:

11 Q Did you -- sorry. Go ahead.

12 A But you would just -- you could just tell
13 after -- you know, like once you got to know people
14 really well, then you would talk about what you were
15 doing, you know. If it was like us and we had been
16 there for a couple of months, we didn't really know each
17 other. You could infer that they are doing like
18 everyone else is doing.

19 Q Did you ever see someone else on your team, did
20 you ever physically watch them enter their time into the
21 computer system?

22 A I don't recall ever sitting or watching someone
23 do it, no. I've been around the computers on my way out
24 when they were leaving, so I could be standing next to
25 them when they were logging out, but I don't remember

107

1 ever physically watching anyone, no.

2 Q Did anyone else on your team ever tell you --
3 you know, you're talking about 10 hours. Hey, I worked
4 10 hours today, but I only wrote down eight?

5 A I don't recall any instances. I don't recall
6 anyone ever saying those specific words.

7 Q You just told me you could infer that everybody
8 was doing the same thing as everybody else, but what I'm
9 trying to find out is: did you actually know whether
10 the other people on your team weren't accurately
11 recording all the time that they worked?

12 A Well, the only way that I would find out, like
13 if not -- day-to-day is when they would start to
14 complain about not being paid what while they were
15 there.

16 Q And you do remember people doing that?

17 A I remember -- I remember -- what were they?
18 Say bitch sessions. Being fed up and just like hearing
19 it that way. No one ever approached me secretly and
20 said, you know. No, that never happened.

21 Q When you say, "bitch sessions," are you
22 referring to -- would supervisors be present or would
23 that just be sales reps?

24 A Just the sales reps.

25 Q And were those sales reps on your team?

108

1 Q Right. when you submitted --

2 A But we weren't -- we weren't supposed to submit
3 all of them. we couldn't go over a certain amount of
4 time.

5 Q And are you talking about when you -- Mr.
6 Church was your supervisor or are you talking about the
7 whole term --

8 A Just in general. The whole time. It would
9 fluctuate, I remember. Sometimes they would be
10 approving overtime and then sometimes they wouldn't be
11 approving overtime, but everyone was working overtime
12 regardless of the fact.

13 Q When you say "everyone," are you talking about
14 your team?

15 A I'm talking about the people -- yeah, most of
16 my time -- the ones that were there that were
17 competitive that were -- that were there to make money
18 and keep their job.

19 Q When you're talking about the policies would
20 change, sometimes it was okay and sometimes it wasn't,
21 are you talking again about your team?

22 A I remember them -- yeah. I don't know if it
23 was just my team. It could have been everybody. I
24 remember them saying that certain -- a certain amount of
25 time would be tolerated and up to this amount -- I think

65

1 paid.

2 A Oh. I never -- maybe I misunderstood your
3 question. No, it did not correspond.

4 (Defendant's Exhibit 27 was previously
5 marked for identification by the court
6 reporter.)

7 BY MR. TOLLEFSON:

8 Q Let me hand you what's been previously marked
9 in this case as Exhibit 27.

10 A Okay.

11 Q Have you had a chance to review Exhibit 27?

12 A Yes, I've reviewed it.

13 Q Do you have an understanding of what that
14 document is?

15 A Yes.

16 Q What's your understanding?

17 A It appears to me to be their recording of time
18 for non-exempt hourly employees and the policies
19 therein.

20 Q And do you see that the purpose is to ensure
21 accurate recording of time for all non-exempt hourly
22 employees?

23 A Yes.

24 Q So did this policy apply to you?

25 A It applied to anyone that was hourly.

67

1 it was 45 hours, and then we couldn't go over that. And
2 sometimes they would say, you know, no overtime this
3 week. They would say that, but then we would still all
4 be there for 10, 12 hours and they would be there, but
5 no one was reprimanded.

6 MR. TOLLEFSON: I'm sorry. Would you read back
7 that last answer?

8 (Record read.)

9 BY MR. TOLLEFSON:

10 Q When you say, "no one was reprimanded," who are
11 you referring to?

12 A My team members, the people that were salesmen
13 and women.

14 Q And reprimanded, they weren't reprimanded for
15 what?

16 A Being at work still.

17 Q And I thought you told me earlier that the time
18 you entered in your personal notebook was roughly the
19 same as the time that you entered on the computer in
20 order to get paid.

21 A I -- let me clarify. What I wrote down, I put
22 down when I sat down at my desk; and then when I would
23 walk to my car, I would write down right when I got out.

24 Q And I asked you if that corresponded to the
25 time that you entered on some system in order to get

66

1 Q Do you see the last sentence at paragraph A
2 where it says, "Time is recorded by accessing me at
3 micronpc.com via the Infonet and confirming or modifying
4 total daily hours worked on the timesheet?"

5 A I see that.

6 Q And do you remember doing that?

7 A I remember entering hours.

8 Q And you told me a few minutes ago that on some
9 occasions the hours that you entered did not match up to
10 the total hours that you worked; is that correct?

11 A Correct..

12 Q Do you see in paragraph A where it says, "No
13 work should be performed off the clock?"

14 A I see it written there, yes.

15 Q Do you have an understanding of what off the
16 clock means?

17 A I'm assuming not clocked in.

18 Q And the second -- I'm sorry. The next sentence
19 after that says, "All time worked must be recorded."

20 A I see that sentence.

21 Q The next sentence, "Failure to record all time
22 worked will subject the employee to disciplinary action
23 up to and including termination."

24 A Yes.

25 Q And are you telling me that you did not comply

68

1 phone, cutting in when people would be on hold.

2 Q Oh, I see. Who else do you remember besides
3 Mr. Church doing that?

4 A Trainers. Other than that, I couldn't tell you
5 who ever listened. Only when they talked. I wouldn't
6 know they were on the phone with me unless they spoke.

7 Q Did Mr. Church do that as well, sometimes speak
8 to you when you said -- like someone was on hold or
9 something?

10 A Jay would never -- I won't say never. Jay
11 usually, if he wanted to tell you something, he would
12 never interrupt a phone call because that was bad
13 tactics. They have very long headset things. He would
14 just walk down the row with his headset on. He was
15 usually up and down the row with his headset listening
16 and then he would tell you things that they couldn't
17 hear.

18 Q But if he didn't speak to you, you would never
19 know whether he was listening to that particular call or
20 not?

21 A Oh, yeah. I wouldn't know.

22 Q And you say the headset was long. Was the
23 headset attached to a cord to his desk?

24 A Actually, I believe, and I may be wrong, it was
25 a remote unit and he would put it on his hip and then he

89

1 you did with it once you finished entering your time for
2 a week?

3 A I can't -- I can't recall. I really don't
4 recall how the VAX worked -- to be honest with you, the
5 training on the VAX wasn't that adequate so I didn't
6 really know how it worked. So I don't remember how it
7 was submitted.

8 Q But you did understand on the VAX system what
9 it was for, that it was for entering your time?

10 A Yes.

11 Q And did you understand how to enter your time?

12 A I assume I was doing it correctly. I don't
13 know.

14 Q But you also told me you don't recall whether
15 you had to put in a particular time or how exactly it
16 worked.

17 A I don't remember physically like sitting and --
18 I'm trying to picture myself. I just remember the blue
19 screen. I also remember that you needed a password and
20 that I think that password changed a little bit. So I
21 remember sometimes having to go get -- I just can't
22 recall how it works.

23 Q And I'm sorry if I already asked you this
24 before. Do you recall when you -- approximately when
25 you changed from the VAX to the Me at Micron system?

91

1 could walk around.

2 Q Okay. And back to what I was asking you
3 earlier, if you were sitting down at your station -- you
4 call it a station; is that --

5 A That's fine.

6 Q And Mr. Church -- this is when you're sitting
7 near Bland Ballard. If Mr. Church stood up, would he be
8 able to see you sitting at your station?

9 A Yes.

10 Q Would he have to step away from his partition
11 or could he see? I'm trying to understand.

12 A Oh. I'm trying to remember. Jay was short.

13 Q Was he -- do you recall if he was shorter than
14 the partitions?

15 A No, he was taller than that. I imagine that if
16 he stood up and looked around he could see everyone on
17 his row.

18 Q I was talking to you earlier about you thought
19 that when you completed entering your time on the Me at
20 Micron system, that you thought that it -- and you
21 submitted it, you thought that it went next to your
22 supervisor; is that right?

23 A I imagine. That's what I thought.

24 Q Do you remember on the VAX system, did you also
25 have to submit it to somebody or do you remember what

90

1 A No, I couldn't give you a good date on that
2 one.

3 Q Do you recall which one you used more -- I mean
4 for the term you were employed?

5 A No. I was about to tell you VAX, but then I
6 just don't remember when Me at Micron started.

7 Q Are you aware whether your supervisors Mr.
8 Church or Mr. Robinson reviewed your timesheets every
9 week?

10 A I would assume they did. I mean I thought
11 maybe that was part of their job. I never read their
12 job description.

13 Q Do you recall them ever coming to talk to you
14 about your timesheets?

15 MR. THOMAS: Object to the form of the question;
16 foundation.

17 THE WITNESS: I don't recall no one ever talking to
18 us about timesheets, no.

19 BY MR. TOLLEFSON:

20 Q You told me earlier that you thought your
21 supervisors should have known you were working more time
22 than you recorded because you -- is it accurate to say
23 that they'd see you there early and late and that time
24 wasn't always recorded on your timesheet?

25 A Correct.

92



1 Q. And can you tell me a little bit about how
2 those functioned?

3 A. Okay. I had --

4 Q. And we're talking about while Ms. Chitwood
5 was your supervisor.

6 A. When Ms. Chitwood was my supervisor I had two
7 gals in Detroit for a while and they both left. I hired
8 another gal in Detroit that was based out of Detroit, flew
9 her in here to meet me, got along great, got a lot of
10 business going. And all of a sudden they laid her off. And
11 so they put Jeff Holds on with me. He was the account
12 executive for part of Minnesota. I worked with him and they
13 were flying him out to Detroit like once a month to visit
14 customers. And then they realized that he couldn't handle
15 to be going out there, so they did hire a guy right before I
16 left to work with me that was based out of Detroit. He was
17 an outside account executive.

18 Q. And you told me before, didn't you, that
19 aside from the trips that you took to Boise, whether it was
20 one or two, you didn't travel anywhere else for the company?

21 A. I traveled one time to Detroit on my own
22 nickel and I did visit customers on my -- at my own expense
23 that had been doing business with me for a couple of years.
24 And I had my manager's blessing to do that.

25 Q. Who was your manager?

1 A. It was Scott -- I can't remember his last
2 name.

3 Q. Okay. You mentioned earlier about taking
4 lunch. Sometimes you worked through your lunches?

5 A. I worked through many of my lunches, but also
6 they were continually bringing foods in, be it pasta, pizza.
7 So we worked through our lunch. But basically they expected
8 you to go back to your desk and just sit there and eat and
9 also work.

10 Q. Talking about the period when Ms. Chitwood
11 was your supervisor, those times when they'd bring in lunch
12 for you, did some of those occur while she was your
13 supervisor?

14 A. I would say a lot of those occurred when she
15 was my supervisor.

16 Q. Okay. And if the lunch wasn't being brought
17 in sometimes you stayed at your desk and worked during
18 lunch?

19 A. Yes.

20 Q. Did you sometimes leave the facility to eat
21 lunch?

22 A. Very rarely.

23 Q. Were there any restaurants nearby?

24 A. There was a cafeteria down on the lower level
25 that had awful food so nobody went there. Basically I think

1 the closest restaurant was maybe 15 minutes away.

2 Q. The times when the company provided pasta or
3 pizza or other food for lunch and you took the food back to
4 your desk and continued working, do you remember whether you
5 recorded the time that you were there working for lunch?

6 A. I don't believe we recorded time. We didn't
7 record saying that -- wait. I take that back. When we were
8 eating there it was supposed to be considered like a lunch
9 hour, we were supposed to, you know, put it down like we
10 were taking a lunch.

11 Q. And who told you that?

12 A. Dave McCauley, Jonathan Hibbs, managers,
13 directors, Lori Chitwood. They felt they were providing the
14 lunch, so ...

15 Q. So they felt they were providing the lunch,
16 so --

17 A. So basically that was -- that was -- we
18 should have just worked for free during that time period.

19 Q. So they didn't tell you to just record part
20 of the lunch hour, they wanted you to not record any of the
21 entire hour of lunch as work?

22 A. They wanted us to put in like we had taken a
23 lunch hour but work through while we were eating, you know,
24 making calls, doing paperwork. So basically you weren't --
25 you were getting paid for your eight hours, like no

1 overtime.

2 Q. Is this people on your team, these lunches
3 we're talking about? Who did this involve?

4 A. They were for all teams in Minnesota. And I
5 heard they were doing it out in Boise also to try to keep
6 people to stay on the phones and get more business in.

7 Q. Did anyone ever ask Mr. McCauley or
8 Mr. Hibbs -- say that they didn't like not recording the
9 time they were working for those lunches?

10 A. Not to my knowledge.

11 Q. Talking about the overtime that you worked,
12 when you were getting close to when you were leaving, like
13 in July, August and September of 2000, is it fair to say --
14 I mean, was it slower? Was there less sales than there were
15 in, say, 1998 or 1999?

16 MR. THOMAS: Object to the form of the
17 question.

18 A. The economy had changed so that computer
19 sales were slower, but we were getting more pressure to get
20 new customers. They wanted me to make five new appointments
21 per week. More pressure to get new customers, get sales.
22 "Do whatever it takes" was our motto.

23 BY MR. TOLLEFSON:

24 Q. Do you know whether there was a Micron retail
25 store in Minnesota?

1 A. Well, here it says you put your total daily
2 hours worked in there, so evidently you don't put your stop
3 and start time. Even though it says this, my supervisor
4 Lori Chitwood would come around and say you have to get this
5 done. You know, she would not approve the overtime, yet she
6 would say you have to get this done. I also worked with an
7 outside rep, Jeff Holds who would come in around 4:00 every
8 day after visiting with customers and leave me with tons of
9 work to do, which I would have to stay and get done or come
10 in early the next day or work my lunch hour to get all this
11 work done. But we were never reprimanded, you know, for
12 working overtime. My supervisor Lori Chitwood - another
13 hand would come around when - you know, it would start to
14 bother her and say, "You guys know I'm going to be going to
15 jail for this if you work overtime and are not getting paid
16 for it." And she knew better because ZEOS - by the time I
17 came to ZEOS they were sued for not paying wages, people
18 working overtime and not getting paid for it.

19 Q. And I'll come back to some of that. Do you
20 remember was Ms. Chitwood your supervisor when you used the
21 VAX system, do you remember?

22 A. I know when she was my supervisor, but I'm
23 not sure when VAX was in place.

24 Q. You see in paragraph A it's talking about the
25 VAX system?

1 A. Yes.
2 Q. And you must have already started reading
3 paragraph A. It says, "Nonexempt employees are expected to
4 accurately record the time they begin and end their work, as
5 well as the beginning and ending time of each meal period."
6 Do you know, did you comply with that before Ms. Chitwood
7 became your supervisor?

8 MR. THOMAS: Object to the form of the
9 question. Foundation.

10 A. I don't remember when Micron and me came
11 about.

12 BY MR. TOLLEFSON:

13 Q. Me@micron?

14 A. Me@micron. If it was required, I did put my
15 time in if I did take a lunch. But many times I did not. I
16 worked through my lunch hour.

17 Q. Is that work through your lunch hour, is that
18 after Ms. Chitwood became your supervisor?

19 A. Actually did before that.

20 Q. What I'm trying to find out is, don't worry
21 about the VAX or me@micron, what system you used, but did
22 you accurately record the time you worked at Micron before
23 Ms. Chitwood became your supervisor?

24 MR. THOMAS: Object to the form of the
25 question.

1 A. Before she became my supervisor I still don't
2 think we were allowed to be putting all our time, because at
3 times they would be flying us to Boise on weekends, you
4 know, for seminars put on by management in Boise. So I
5 don't think we were putting it down back then -- or I
6 wasn't.
7 BY MR. TOLLEFSON:
8 Q. I'm going to hand you what's been previously
9 marked as Defendant's Exhibit No. 27. This is a one-page
10 document, Bates Number M2299. Have you seen this document
11 before?

12 A. I don't know if I have or not. Possibly when
13 I flipped through the InfoNet.

14 Q. And you told me you understood that policies
15 from the manual were available on the InfoNet?

16 A. They were available.

17 Q. Do you see the last sentence of paragraph A
18 on Exhibit No. 27 says, "Time is recorded by accessing
19 me@micronpc.com via the InfoNet and confirming or modifying
20 total daily hours worked on the timesheet"? Do you see
21 that?

22 A. Yes.

23 Q. And do you see paragraph B where it says,
24 "Prior to submission of timesheets for supervisor approval,
25 nonexempt employees are responsible for reviewing their

1 timesheets to verify the accuracy of all time recorded"? Do
2 you see that?

3 A. Yes.

4 Q. And paragraph C says, "In the event there's
5 an error in the amount of pay, nonexempt employees should
6 promptly bring the discrepancy to the attention of their
7 supervisor so corrections can be made as quickly as
8 possible." Do you see that?

9 A. Yes. But how can you make -- you know, state
10 that to her when she's telling you one day you need to get
11 this work done. The next day she's saying no overtime. You
12 know, you would lose your job because you wouldn't make your
13 goal.

14 Q. Do you see on the bottom of the document
15 where it says, "For additional information, contact the
16 payroll department or human resources department"?

17 A. Yes.

18 Q. Did you ever do that?

19 A. No. They were all out in Idaho. Basically
20 the HR we had here was real basic.

21 Q. What do you mean by real basic?

22 A. Like one person all the time, one person half
23 time or something.

24 Q. But there was an HR person on-site?

25 A. Not the whole time I worked there, I don't



Page 69

[1] Q: Let me step back a minute. Were you
[2] advised on more than one occasion, either as a web
[3] sales rep or a special programs developer, that you
[4] were not authorized to work overtime?

[5] A: Yes.

[6] Q: So what I'm trying to find out is did
[7] that situation change? Were there sometimes when
[8] you were told that you weren't allowed to work
[9] overtime and other times when you were told it was
[10] okay to work overtime?

[11] A: Yes.

[12] Q: Do you have any sense between — step
[13] back — between October '98 and January 2001, do
[14] you have any sense of how often that changed?

[15] A: No.

[16] Q: Is it fair to say that changed more than
[17] five times?

[18] MR. THOMAS: Object to the form of the
[19] question.

[20] THE WITNESS: I'm not certain.

[21] Q: BY MR. TOLLEFSON: You said you didn't
[22] remember who advised you that overtime was not
[23] allowed. Do you remember how you were — by what
[24] method of communication you were advised?

[25] A: I don't.

Page 70

[1] Q: When you were a special programs
[2] developer, did you attend weekly meetings with a
[3] sales team?

[4] A: Yes, but not regularly.

[5] Q: Was that different weekly meetings with
[6] different sales team, or was it one particular
[7] sales team that — you said not regularly. I'm
[8] just —

[9] A: Not regularly with all sales teams.

[10] Q: And when you were a web sales rep, were
[11] you on a sales team at that time?

[12] A: Yes.

[13] Q: And that's when Mr. Church was your
[14] supervisor?

[15] A: Yes.

[16] Q: Do you recall approximately how many
[17] other sales reps there were on your team?

[18] A: Yes.

[19] Q: How many?

[20] A: Approximately 10 to 12.

[21] Q: Do you remember, was there ever an
[22] occasion when you recorded overtime during a period
[23] in which you were told that you couldn't work
[24] overtime?

[25] A: Yes.

Page 71

[1] Q: And were you ever reprimanded for
[2] recording overtime during a period in which you
[3] were told you couldn't work overtime?

[4] A: Verbally, yes.

[5] Q: And who verbally reprimanded you?

[6] A: Jay Church.

[7] Q: Did you ever receive a verbal reprimand
[8] of that nature from anyone else?

[9] A: No.

[10] Q: On how many occasions did Mr. Church
[11] verbally reprimand you this way?

[12] A: I'm not certain.

[13] Q: More than one occasion?

[14] A: I'm not certain.

[15] Q: Can you tell me about the occasion that
[16] you do remember?

[17] A: Yes. Jay took me aside in his cubicle,
[18] told me that I should not be claiming the extra
[19] five hours in my week because they would have to be
[20] removed to comply with the no overtime mandate.

[21] Q: Okay. And do you know whether, in fact,
[22] — so you said an extra five hours. Was that a
[23] week in which you worked 45 hours? Is that what
[24] you were talking about?

[25] A: Yes. The company would bring in lunch

Page 72

[1] and require eating in and working through lunch.

[2] Q: Do you know whether or not those five
[3] hours were, in fact, removed?

[4] A: I don't.

[5] Q: And you don't specifically recall any
[6] other occasions of being verbally reprimanded for
[7] working overtime?

[8] A: No.

[9] Q: If I told you that from June of — I'm
[10] sorry. If I told you that from June of '98 through
[11] January 2001 you recorded and were paid for a total
[12] of 686.75 hours of overtime, would you have any
[13] reason to dispute that?

[14] MR. THOMAS: Object to the form of the
[15] question.

[16] THE WITNESS: I don't understand the question.

[17] Q: BY MR. TOLLEFSON: Sure. If I
[18] represented to you that the company's records
[19] indicated that for the period from June '98 through
[20] when your employment ended you were paid for a
[21] total of 686.75 hours of overtime —

[22] MR. THOMAS: Object to the form of the
[23] question.

[24] Q: BY MR. TOLLEFSON: — would you have any
[25] reason to dispute that?



Page 165

[1] pretty small perimeter around me with who I talked
[2] to, what I did.
[3] Q: Did you take lunch breaks?
[4] A: Rarely. I did.
[5] Q: What do you mean by rarely?
[6] A: Maybe once a week, possibly twice a
[7] week.
[8] Q: When you took lunch breaks, where would
[9] you take them?
[10] A: We'd usually go off the Micron campus
[11] and maybe go to Jack-in-the-Box or Winco or
[12] Albertson's or something close by that we could
[13] stop and get a bite to eat.
[14] Q: Did you have a particular individual or
[15] group of individuals that you would take lunch
[16] breaks with?
[17] A: Particular individual, actually two.
[18] Kim Smith and Tim Headding.
[19] Q: Who?
[20] A: Tim Headding.
[21] Q: Anyone else?
[22] A: Once in a while Jeff Parrish. Dan Perry
[23] when he worked there. That's about it.
[24] Q: You never brought your lunch to eat at
[25] site?

Page 166

[1] A: No.
[2] Q: Not a sack lunch type of guy?
[3] A: No.
[4] Q: Did you go to local restaurants to have
[5] lunch?
[6] A: Like I say, when we went out it was
[7] usually to a local restaurant.
[8] Q: Quizno's?
[9] A: Yeah, once in a while.
[10] Q: Jack-in-the-Box?
[11] A: Once in a while. McDonald's and Taco
[12] Time.
[13] Q: Under the Onion?
[14] A: They're all right there, yeah.
[15] Q: All those in the area?
[16] A: I think I only went to Under the Onion
[17] maybe once or twice.
[18] Q: Bolo's?
[19] A: Yeah.
[20] Q: You went to Bolo's quite a bit?
[21] A: Once or twice.
[22] MR. WILLIAMS: Object to form.
[23] Q: BY MR. DOCKSTADER: Did you pay cash or
[24] credit when you went to lunch?
[25] A: Usually cash.

Page 167

[1] Q: Did you ever use credit?
[2] A: No.
[3] Q: Are you sure?
[4] A: Positive.
[5] Q: How long would you typically take your
[6] lunch break?
[7] A: If I left, anywhere from 15 minutes to
[8] sometimes I'd take the hour, but it was rare I'd
[9] ever take a full hour.
[10] Q: Sometimes you'd take more than an hour?
[11] A: No, never took more than an hour.
[12] Q: Never?
[13] A: I would say never.
[14] Q: Did you take lunch alone or did you
[15] always when you took lunch go with somebody else?
[16] A: Usually went with somebody else.
[17] Q: Did you drive or did you walk?
[18] A: Usually drove.
[19] Q: When you left the building for lunch,
[20] did you exit through the same area where you
[21] entered the building?
[22] A: Yes.
[23] Q: You had to scan out?
[24] A: Yes.
[25] Q: So you couldn't get out of the building

Page 168

[1] without scanning either, could you?
[2] A: That's right.
[3] Q: Would you typically scan in and scan out
[4] every time you came in the building?
[5] A: You'd have to, otherwise you wouldn't
[6] get in or out of the building.
[7] Q: So after your lunch, can you describe
[8] for me what your afternoon tasks would typically
[9] be? Were they different from your morning tasks?
[10] MR. WILLIAMS: Object to form.
[11] THE WITNESS: Pretty much the same as the
[12] morning tasks. We didn't have a call blitz. So
[13] the afternoon was pretty much spent on other
[14] things, talking to clients, selling computer
[15] systems, outbound calls.
[16] Q: BY MR. DOCKSTADER: You indicated
[17] earlier that you had sales team meetings. Do you
[18] recall that?
[19] A: Yes.
[20] Q: Was there a set time when you would have
[21] sales team meetings?
[22] A: Yes. I don't remember when those times
[23] were, though. Usually like a Friday morning or
[24] Tuesday morning. It kind of changed as I worked
[25] there. But usually it was a morning meeting and

Page 105

[1] THE WITNESS: Yes, that's what it says.
[2] Q: BY MR. DOCKSTADER: And also the policy
[3] is to verify the accuracy before submitting; isn't
[4] that right?
[5] MR. WILLIAMS: Object to form.
[6] Q: BY MR. DOCKSTADER: Paragraph B.
[7] A: Oh, Yes.
[8] Q: And the policy is also if there's any
[9] error in the amount of pay employees are to quote,
[10] promptly bring the discrepancy to the attention of
[11] their supervisor so corrections can be made as
[12] quickly as possible; isn't that right?
[13] MR. WILLIAMS: Object to form.
[14] THE WITNESS: Yes.
[15] Q: BY MR. DOCKSTADER: And if there's any
[16] additional information necessary, it directs you to
[17] contact the payroll department or human resources
[18] department; isn't that right?
[19] A: Yes, that's what it says.
[20] Q: Did you comply with the requirements of
[21] this policy?
[22] MR. WILLIAMS: Object to form. Go ahead.
[23] THE WITNESS: No, I did not.
[24] Q: BY MR. DOCKSTADER: If not, what
[25] requirements did you fail to comply with?

Page 106

[1] MR. WILLIAMS: Object to the form. Go ahead.
[2] THE WITNESS: There was a time that we were
[3] told not to put in all of our time because we
[4] wouldn't get paid for it. And we were told that at
[5] that time we were only allowed six hours per pay
[6] period of overtime and that if we worked over six
[7] hours of overtime, we were not to put it on our
[8] time card, that we wouldn't be paid for it, it
[9] would not be approved, and that if we did it would
[10] benefit us in the future anyway because we'd be
[11] getting commissions from it.
[12] Q: BY MR. DOCKSTADER: So in what respect
[13] if you could identify the specific provisions in
[14] this policy did you fail to comply with?
[15] A: I modified my time cards so they
[16] wouldn't reflect more than six hours per pay period
[17] worked because that was what I was asked to do.
[18] That's what I was told to do.
[19] Q: More than six hours per day worked or
[20] more than six hours per day overtime? I'm not sure
[21] I understand.
[22] A: More than six hours per pay period.
[23] Q: Of what? Six hours per pay period of
[24] what? Overtime?
[25] A: Yeah, that's right. We were not allowed

Page 107

[1] to enter in more than six hours of overtime per pay
[2] period.
[3] Q: And you were paid on a biweekly basis,
[4] every two weeks; isn't that right?
[5] A: Yes.
[6] Q: So you weren't allowed to enter more
[7] than six hours of overtime every two weeks; is that
[8] right?
[9] A: That's right.
[10] Q: Who told you that?
[11] A: Jaime Nava.
[12] Q: When did he tell you that?
[13] A: I believe in a meeting in February.
[14] Q: February of what?
[15] A: Of last year, 2001.
[16] Q: Who was at that meeting?
[17] A: Sales team four. All of our — all of
[18] the sales team.
[19] Q: Could you —
[20] A: Clint Pulsifer. I'm sorry.
[21] Q: Sales team four consisting of Clint?
[22] A: Clint Pulsifer, Jason Childers, myself.
[23] I'm trying to think of everybody there. Kim Smith.
[24] Chris Papero.
[25] Q: Could you spell that, please.

Page 108

[1] A: P-a-p-e-r-o. Jeff Parrish. Scott Mayne
[2] may have been involved in that meeting.
[3] Q: Scott Mayne?
[4] A: Scott Mayne, M-a-y-n-e. I don't
[5] remember the names of the others.
[6] Q: Do you remember how many people were on
[7] sales team four in the February 2001 time frame?
[8] A: Seems like there was 12, maybe 13.
[9] Q: Where did this meeting take place?
[10] A: In one of the training rooms at the
[11] Stratford Way location.
[12] Q: How long did the meeting last?
[13] A: I would say probably a half hour.
[14] Q: Was it a part of a regular sales team
[15] meeting, or was this a special meeting?
[16] A: I don't remember. We had sales team
[17] meetings once a week. It may have been part of a
[18] regular sales team meeting, but Jaime called sales
[19] team meetings throughout the week, so it could have
[20] been a special. It could have been a regular
[21] meeting. I don't know.
[22] Q: Do you know what day of the week the
[23] meeting occurred?
[24] A: I don't remember.
[25] Q: Would you have any calendars or

EX 5-2



1 February of 1997 to August of 2000 did your shifts change,
2 your assigned shift?

3 A. In commercial sales we had just one shift,
4 Monday through Friday. Depending on the region, you may
5 have had a slight variation in hours from 7:00 to 4:00, 8:00
6 to 5:00 or 9:00 to 6:00.

7 Q. So that's what I'm referring to as shifts.
8 Did you have a 7:00 to 4:00 shift or an 8:00 to 5:00 shift?

9 A. I technically had an 8:00 to 5:00.

10 Q. Did you have that same shift -- was that your
11 assigned shift for the full-time that you were in
12 commercial?

13 A. I believe in the beginning I had a 7:00 to
14 4:00.

15 Q. You said technically you had an 8:00 to 5:00
16 shift. What did you mean by?

17 A. I was generally there before 8:00. I
18 generally arrived anywhere between 7:00 and 7:30 and left
19 generally between -- anywhere between 6:00 and 7:00 at
20 night.

21 Q. You're talking about the period that you were
22 in the -- the entire period that you were in the commercial
23 group?

24 A. Pretty much, yes.

25 Q. Did you typically take a lunch?

1 A. We rarely took lunches because we had to take
2 care of our customers to achieve the quotas.

3 Q. Did you record the time that you worked
4 during lunch?

5 A. There was no time recording of such for that.

6 Q. So when you submitted your hours for the week
7 to Ms. Mertig did you ever include time that you worked
8 during lunch?

9 A. The hours submitted were according to what
10 they specified. And at times I would note in the e-mails
11 and other times it was just, you know, there is no overtime,
12 so put down eight hours a day. That's it.

13 Q. To get into the building is there a security
14 desk?

15 A. There was a security desk that was handled
16 via Unisys.

17 Q. And was that on the first floor?

18 A. Yes.

19 Q. Did you have to scan in somehow with a card
20 or something like that?

21 A. There was a card reader that was handled via
22 Unisys.

23 Q. Did you have to scan that card reader in
24 order to get into the building?

25 A. Yes.

1 Q. Did you also have to scan to get out?

2 A. I believe we did, yes.

3 Q. And then once you got past the security desk
4 did you have to go upstairs to get to the Micron portion of
5 the building?

6 A. Yes.

7 Q. Was there of any portion of the Micron that
8 you were aware of that was on the first floor of the
9 building?

10 A. I don't recall anything on the first floor.

11 Q. Were there other sales operations besides
12 commercial up on the second floor?

13 A. There was the domestic sales. There was a
14 portion of government at one time and education also. And
15 there was also technicians or technical support. And they
16 had the HR office. They also had a training or trainers.

17 Q. Trainers?

18 A. Uh-huh.

19 Q. For who?

20 A. For the sales reps.

21 Q. For the inside sales reps?

22 A. Yes.

23 Q. Was there also a training school for outside
24 sales reps?

25 A. I believe the outside sales reps came

1 sometimes, but most of the training or anything that was
2 done on that effect was done in Idaho.

3 Q. Are you aware of anything called Top Gun?

4 A. Yes, we had Top Gun.

5 Q. And what was that?

6 A. That was training techniques for training
7 techniques. And I believe we had outside sales reps come in
8 for a portion of that. There were different -- different
9 training times that were done, but we had Top Gun training.

10 Q. Was there a separate Top Gun department or
11 was it in a separate area up on the second floor? How did
12 that work?

13 A. The Top Gun training was considered for
14 commercial sales.

15 Q. Okay. And did they have their own separate
16 -- is there a training room or a training center?

17 A. There was a training area on the other end of
18 the building on the same floor.

19 (At this time Defendant's Deposition Exhibit
20 No. 112 was marked for identification by
21 the Court Reporter.)

22 BY MR. TOLLEFSON:

23 Q. Handing you a one-page document marked as
24 Defendant's Exhibit No. 112, have you seen this document
25 before?



Page 81

Page

[1] Commercial entities were.
[2] Q: Tell me what was different at Micron
[3] Government.
[4] A: Micron Government would say, "This week
[5] if you're scheduled 8:00 to 5:00, you're not going
[6] to lunch. You have to stay here. We're bringing
[7] in lunch on Monday, Tuesday, and Thursday, bringing
[8] our own lunch on Wednesday and Friday."
[9] Q: And how does that impact what time you
[10] record and whether you choose to record it or not?
[11] A: They would tell you whether or not that
[12] one hour you were going to work overtime would be
[13] recorded or not.
[14] Q: Well, you were the one that was
[15] recording your time. Isn't that right?
[16] A: Right, but they would tell you whether
[17] they would approve it or not.
[18] Q: Who is "they"?
[19] A: Your supervisor or manager.
[20] Q: Who was your manager?
[21] A: It was Dave Haworth.
[22] Q: Your supervisor was Mark Cox. Is that
[23] right?
[24] A: Mm-hmm, correct.
[25] Q: Do you know who reviewed your time

Page 82

Page 8

[1] sheets during the time you were at Micron
[2] Government?
[3] A: Mark Cox.
[4] Q: And you input all of your time. Is that
[5] right?
[6] A: Yes.
[7] Q: And you inputted during that time period
[8] overtime hours that you worked. Isn't that right?
[9] A: I worked some overtime at Micron
[10] Government, but not a grand, not a great amount.
[11] Q: Why is that?
[12] A: Didn't have an account base that
[13] required me to work more than probably one hour a
[14] day or hour and a half a day of overtime.
[15] Q: Why did you leave Micron Government?
[16] A: I didn't enjoy working there, and I was
[17] going to take another position at a different
[18] company.
[19] Q: Did you leave voluntarily?
[20] A: Mm-hmm.
[21] MR. WILLIAMS: Need to say yes.
[22] THE WITNESS: Yes.
[23] Q: BY MR. DOCKSTADER: Did you leave on
[24] good terms?
[25] A: Fair.

[1] Q: Were you aware that company policy
[2] required you to keep track of all of the time that
[3] you worked and recorded accurately?
[4] MR. WILLIAMS: Object to the form.
[5] THE WITNESS: Yeah, I believe it was in the
[6] manual, but I don't have a specific recollection of
[7] it.
[8] Q: BY MR. DOCKSTADER: But you understood
[9] that was company policy?
[10] A: Yes.
[11] Q: You understood that was company policy
[12] when you worked for Edge Technology. Correct?
[13] A: Yes.
[14] Q: And when you worked for Micron Computer
[15] Inc. Isn't that right?
[16] A: Yes.
[17] Q: When you worked for Micron Electronics?
[18] A: Yes.
[19] Q: That was company policy when you worked
[20] for Micron PC, Inc?
[21] A: Yes.
[22] Q: Company policy when you worked for
[23] Micron Computer Systems, Inc?
[24] A: Yes.
[25] Q: And Micron Government Computer Systems.

[1] Isn't that right?
[2] A: Yes.
[3] Q: How much of the estimate of zero to five
[4] hours of off-the-clock work that you make is
[5] attributed to work that you performed at the work
[6] site versus work that you did somewhere else?
[7] A: I think approximately 50 percent of it
[8] was at work and 50 percent of it was at home.
[9] Q: And this zero to five hour estimate that
[10] you came up with, are you saying that that's during
[11] 1996 through 1999 only, or are you saying it's
[12] during a particular period of time other than that?
[13] A: I feel like it was from '97 through '99.
[14] Q: So excluding '96?
[15] A: Yeah.
[16] Q: And you're not applying that to that
[17] time period in 2000 that you came back?
[18] A: No. I was — there was a couple of
[19] instances where it became necessary, but it was not
[20] an everyday occurrence in 2000.
[21] Q: So that zero to five hours wouldn't
[22] apply during that time period, in terms of your
[23] estimate?
[24] A: No, no.
[25] Q: Let's talk about 1997, or 1997 through

Page 117

[1] and Mr. Casey did informally.

[2] Q: Well, when you make the distinction
[3] between formal and informal, what do you mean?

[4] A: Mr. Cox was stating policy. Mr. Casey
[5] would be saying, "This is what we're going to have
[6] to do to allow you guys to work the extra hours you
[7] need to work."

[8] Q: Well, what did Mr. Cox tell you
[9] specifically about working overtime and not
[10] recording it?

[11] A: He specifically said, "We need you guys
[12] to be — we need you employees to be here between
[13] your normal hours, and you need to work an extra
[14] hour but not put it down. We can't put it down
[15] right now. Stay through your lunch but not record
[16] it," or he'd say, "Stay through your lunch and
[17] record it." He actually went back and forth during
[18] that tenure, or, "You need to stay after hours and
[19] record it," or "not record it."

[20] Q: And that's different than what Mr. Casey
[21] told you?

[22] A: Yeah, he did not specifically state
[23] that.

[24] Q: So Mr. Casey didn't specifically tell
[25] you to work overtime and not record it. Isn't that

Page 118

[1] right?

[2] A: He didn't say it like that, no.

[3] Q: He didn't specifically tell you that?

[4] A: No.

[5] Q: Other than Mr. Cox, did anyone ever
[6] specifically tell you to work overtime but not
[7] record it?

[8] MR. WILLIAMS: Object to the form. Asked and
[9] answered.

[10] THE WITNESS: Not in those words, no.

[11] Q: BY MR. DOCKSTADER: Did you ever tell
[12] Mr. Cox or human resources that you were working
[13] overtime and not recording it?

[14] A: I objected to Mr. Cox by e-mail about
[15] that subject. But I didn't tell human resources
[16] until I left.

[17] Q: Until you left the company?

[18] A: Exit company, exit interview.

[19] Q: What was Mr. Cox's response to you when
[20] you told him that in the e-mail?

[21] A: I don't have it with me.

[22] Q: Do you want to look at it? You don't
[23] remember what he said now?

[24] A: I don't remember exactly what he said.

[25] Q: Do you remember generally what he told

Page 119

[1] you?

[2] A: I'd like to look at it before I state
[3] what he said.

[4] (Exhibit "188 marked.)

[5] Q: BY MR. DOCKSTADER: You have in front of
[6] you what's been marked Deposition Exhibit "188.
[7] Is that right?

[8] A: That is correct.

[9] Q: Is that the e-mail that you've been
[10] referring to throughout your deposition?

[11] A: Yes.

[12] Q: Have you had an opportunity to look at
[13] that e-mail?

[14] A: Yes.

[15] Q: And actually, it's more than one e-mail,
[16] isn't that right?

[17] A: It's a series, yeah.

[18] Q: It's a chain of e-mails over a two-day
[19] period. Isn't that right?

[20] A: Yeah, it spans two days, yes.

[21] Q: And in terms of the e-mail that you're
[22] talking about you sent to him objecting to the —
[23] or telling him that you were working overtime and
[24] not recording it, where did you tell him that?

[25] A: It starts in, "Mark, I was in at 7 this

Page 120

[1] morning. Hoping to get the quote for the servers
[2] done. Can I work till about 4:30."

[3] Q: So did you tell him that you were
[4] working overtime and not recording it there?

[5] A: I asked him if I could leave early to
[6] not incur overtime — well, would I be leaving
[7] early? Well, 7:00 to 4:00. I'd still be working
[8] overtime at that time.

[9] Q: So you were asking him if you could work
[10] overtime. Isn't that right?

[11] A: Yes, and leave early.

[12] Q: Well, leave early from your shift, but
[13] you'd come in early that morning. Isn't that
[14] right?

[15] A: Right, right.

[16] Q: So you came in at 7:00 and wanted to
[17] stay until 4:30, which would require you to work a
[18] half hour of overtime. Is that right?

[19] A: Correct.

[20] Q: So you were asking him if that is okay?

[21] A: Yes, if both of those were okay.

[22] Q: Well, you'd already come in at 7:00.
[23] Right?

[24] A: Right.

[25] Q: What is the acronym by the way, DHHS



Page 93

(1) A: No.
(2) Q: Did you tell anyone you were not
(3) complying with the policy?
(4) A: No.
(5) Q: For what reasons would you stay through
(6) lunch and not record your time?
(7) A: Sometimes I would get busy or get a long
(8) phone call that would drag me into my lunch hour.
(9) I was told that working through lunch didn't count,
(10) that you couldn't use that as an hour on your
(11) shift, and it wasn't supposed to count as overtime.
(12) You were supposed to take a lunch.
(13) Q: When were you told that?
(14) A: It was later on when I started working
(15) for Mark Auchempach.
(16) Q: Who told you that?
(17) A: Mark Auchempach.
(18) Q: And what exactly did he tell you?
(19) A: You couldn't — if you were on a 7 to 4
(20) schedule or 8 to 5, you couldn't work through lunch
(21) to cut your shift an hour short, and working
(22) through lunch didn't count as overtime.
(23) Q: He wanted you to be there during your
(24) whole shift. Is that what you're saying?
(25) A: Yes.

Page 94

(1) Q: And you wanted to work through lunch and
(2) leave early?
(3) A: Or just work through lunch. I liked my
(4) lunches, but sometimes I'm just too busy.
(5) Q: There were times when you maybe worked
(6) through your regularly scheduled lunch hour and
(7) took a later lunch?
(8) A: No.
(9) Q: Were there times when you worked through
(10) lunch and then —
(11) A: There may have been a few occasions I
(12) took a little bit later lunch, but they were pretty
(13) strict on making sure they had coverage.
(14) Q: But there was some flexibility, you
(15) could take lunch at different times if you wanted?
(16) A: Not really.
(17) Q: If you wanted to, what would you have
(18) to? Get approval?
(19) A: Yes.
(20) Q: And did you ever ask for approval to do
(21) that?
(22) A: Yes.
(23) Q: And was it ever denied?
(24) A: I don't remember. I do remember being
(25) told to make it quick.

Page 95

(1) Q: In terms of make the lunch quick?
(2) A: Yeah, like run across the street to
(3) McDonalds.
(4) Q: Do you know how often you took lunch
(5) breaks when you worked —
(6) A: Most of the time.
(7) Q: — for Mark Auchempach?
(8) A: Most of the time.
(9) Q: So I understand, when you started, you
(10) were working for Jim Watkins. Is that right?
(11) A: Yes.
(12) Q: And you were in consumer and small
(13) business. Is that right?
(14) A: Yes.
(15) Q: How long did you work for Mr. Watkins?
(16) A: I don't remember.
(17) Q: Did you stay in consumer and small
(18) business the whole time you worked for Mr. Watkins?
(19) A: I think so.
(20) Q: Who was your next supervisor after
(21) Mr. Watkins?
(22) A: Tony Robinson.
(23) Q: Tony Robinson?
(24) A: Yes.
(25) Q: How long did you work for Mr. Robinson?

Page 96

(1) A: I don't remember that either. Probably
(2) close to a year.
(3) Q: What group were you in when you worked
(4) for him?
(5) A: Small business.
(6) Q: Is Mr. Robinson a friend of yours?
(7) A: No.
(8) Q: Who was your next supervisor after
(9) Mr. Robinson?
(10) A: Mark Auchempach.
(11) Q: And how long did you work for Mark
(12) Auchempach?
(13) A: Probably eight months to a year. I
(14) don't remember the dates.
(15) Q: Who was your next supervisor after
(16) Mr. Auchempach?
(17) A: That was it.
(18) Q: So he was your supervisor when you left?
(19) A: Yes.
(20) Q: When you worked for Mr. Watkins, did you
(21) regularly take your lunch breaks?
(22) A: No.
(23) Q: How often did you take lunch breaks?
(24) Because you said before that you regularly did take
(25) lunch, and I'm trying to —

Page 161

[1] fairly consistent with the other teams.

[2] Q: What do you mean by his approach in
[3] terms to overtime being inconsistent?

[4] A: Mark would say, "I don't care how many
[5] hours it takes you to get your job done. You're
[6] going to get your talk time in. You're going to
[7] get your contacts in, blah, blah, blah."

[8] But we couldn't work overtime, so we all
[9] -- "You have a job to do. If you can't meet those
[10] numbers, you're gone. So if you need to work extra
[11] hours, you need to work extra hours, but you can't
[12] work overtime." That's not consistent with company
[13] policy. Thank goodness I could get mine in in a
[14] normal day.

[15] Q: You could?

[16] A: I could. There were people that
[17] couldn't, and that's a pretty bad situation to be
[18] in.

[19] Q: So was the focus one of being more
[20] efficient and productive with your time during the
[21] day?

[22] A: Not with me specifically.

[23] Q: I mean with the group, with your team.

[24] A: Yes. You know, and with Mark it was --
[25] the you know what really flows downhill. When

Page 162

[1] times were good and Mark's team won nine or ten
[2] months in a row, you probably couldn't have a
[3] better friend than Mark. But when it went bad, he
[4] passed it well, the policies, whatever.

[5] Q: Did Mark ever tell you he wasn't going
[6] to pay you for overtime?

[7] A: Me specifically?

[8] Q: Yes.

[9] A: No.

[10] Q: Did he ever tell anyone to your
[11] knowledge that he wasn't going to pay for their
[12] overtime?

[13] A: I believe so.

[14] Q: Who?

[15] A: The whole team.

[16] Q: When did he say that?

[17] A: We had a few kind of emergency team
[18] meetings. When things were going bad and moral was
[19] bad, he'd call us in and yell at us. That's kind
[20] of when he said those things. They weren't
[21] specifically to me.

[22] Q: Was that towards the end of your time?

[23] A: Yes.

[24] Q: What did he tell you at those team
[25] meetings?

Page 163

[1] A: What I've already told you.

[2] Q: Well, what did he say? I don't think
[3] we've talked about these team meetings.

[4] A: You've got to hit your numbers. You
[5] have to hit your contact, your talk time, call
[6] blitz, whatever, and if, you know, -- because if
[7] you didn't -- you had to get those done each day if
[8] you wanted to keep your job.

[9] Q: And you couldn't work any overtime
[10] unless he approved it? I think that's what you
[11] said earlier.

[12] A: That's right. At that time no overtime
[13] was being approved to my knowledge.

[14] Q: As a general rule?

[15] A: As a general rule.

[16] Q: On Mark's team?

[17] A: Yes.

[18] Q: But if you needed overtime, you
[19] understood that you had to go to him and ask for
[20] approval. Right?

[21] A: Right.

[22] Q: Now, do you know of anyone on your team
[23] ever going to Mark and asking for overtime and
[24] having it denied?

[25] A: I don't know.

Page 164

[1] Q: Did you ever do that, ask for overtime
[2] and have it be denied?

[3] A: I hit my numbers.

[4] Q: So the answer is no?

[5] A: I guess the answer is no.

[6] Q: Did Mark at these team meetings -- is it
[7] more accurate to say that he was saying there's no
[8] overtime without approval, which is what you've
[9] testified to, or, no, we're not going to pay for
[10] overtime if you work it. Did he actually say that?

[11] A: I think he actually did say that.

[12] Q: When?

[13] A: I don't remember. It was not a real
[14] pleasant environment the last couple of months I
[15] was there. We had frequent team meetings that
[16] weren't scheduled just because things were really
[17] bad. I mean, with the comp plan changes, numbers
[18] down, pressure on him and the other employees, they
[19] had a lot of impromptu meetings like that. I would
[20] say in my last two months is when that happened. I
[21] couldn't give you a date.

[22] Q: Was the focus on "be more efficient in
[23] the day, work harder in the day, get what you need
[24] to do done during the day." Is that right?

[25] A: That's right.



- 1 A. Yes.
 2 Q. Is that correct?
 3 A. Yes.
 4 Q. How else did you have lunch?
 5 A. Well, there were periods of time when lunch
 6 would be brought in for us. We would have a call campaign
 7 or whatever and they would want us to stay in.
 8 Q. Who would pay for the lunch?
 9 A. Micron.

10 MR. THOMAS: Thank you.

11 RECROSS-EXAMINATION

12 BY MR. TOLLEFSON:

13 Q. During those times when Micron paid for the
 14 lunch did you ever record the time that you spent working
 15 for any of those lunches?

16 A. No.

17 MR. TOLLEFSON: We'll adjourn the
 18 deposition at this time.

19 (Whereupon at 4:00 p.m., Thursday, January

20 31, 2002 the taking of the deposition of

21 LINDA LEE was concluded.)
 22
 23
 24
 25

1 STATE OF MINNESOTA :

2 COUNTY OF HENNEPIN :

3

4 Be it known that I took the deposition of
 5 LINDA LEE, on the 31st day of January, 2002, at 220 South
 5 Sixth Street, Suite 600, Minneapolis, Minnesota;

6 That I was then and there a Notary Public in and
 7 for the County of Hennepin, State of Minnesota, and that by
 7 virtue thereby I was duly authorized to administer an oath;

8 That the witness before testifying was by me
 9 first duly sworn to testify the whole truth and nothing but
 9 the truth relative to said cause;

10 That the testimony of said witness was recorded
 11 in Stenotype by myself and transcribed by computer-aided
 11 transcription by me; and that the deposition is a true
 12 record of the testimony given by the witness to the best of
 12 my ability;

13 That the cost of the original transcript has been
 14 charged to the party noticing the deposition, unless
 14 otherwise agreed upon by Counsel, and that copies have been
 15 otherwise agreed upon by Counsel;

16 That I am not related to any of the parties
 16 hereto not interested in the outcome of the action;

17 That the reading and signing of the deposition by
 17 the witness was executed as evidenced by the preceding page;

18 That Notice of Filing was waived.

19 WITNESS MY HAND AND SEAL this 2nd day of
 20 February, 2002.

21

22

23

24

25

Sheila D. Fearing, RPR
 Court reporter

1 (UPON COMPLETION forward this original Reading and Signing
 2 Certificate to Attorney Gregory C. Tollefson, who already
 2 has the Sealed Original.)
 3

4 LINDA LEE

5 I, LINDA LEE, do hereby certify that I have read
 6 the foregoing deposition of my Deposition, and believe the
 7 same to be true and correct, (or, except as follows, noting
 8 the page and the line number of the change or addition
 9 desired and the reason why):

10
 11 Page Line Change or Addition Reason

12

13

14

15

16

17

18

19

20

21

22

23 dated this day of , 2002.

24 SDF

25

Exhibit No. 9



Page 174

Page 171

[1] A: Yes.
[2] Q: Did you have to scan in?
[3] A: Yes.
[4] Q: And what would be the next thing you
[5] typically would do after you arrived at work after
[6] you scanned in?
[7] A: It depends on what time it was.
[8] Q: What do you mean by that?
[9] A: I mean, to get to work — if I'm late or
[10] getting a little close to when I need to be there
[11] or even if I know I have a lot of work left over
[12] from the day before, I'll go right up and get to
[13] work.
[14] Q: So you just walk right up the stairs and
[15] go up to your work station?
[16] A: Yes.
[17] Q: And what about when you worked for
[18] Ms. Boschec, did you have an assigned shift or —
[19] A: Same hours.
[20] Q: 7:00 to 4:00?
[21] A: Yes.
[22] Q: Did you continue to arrive at work
[23] between 6:30 and 7:00?
[24] A: Yes.
[25] Q: And that's up through the time your

[1] you came in?
[2] A: Yes.
[3] Q: The time periods you were working for
[4] Ms. Boschec or Ms. Ingalls and you worked through
[5] lunch, did you typically record that time?
[6] A: When I worked through lunch? Just
[7] depends. Usually not. It just depends on how
[8] strong they were about no overtime.
[9] Q: So it would vary?
[10] A: Yes.
[11] Q: Working for Ms. Ingalls, what time did
[12] you typically leave work, or did it vary quite a
[13] bit?
[14] A: It varied. Heck, for them I could come
[15] in at 5 in the morning — I've done that before —
[16] and leave at 9, leave at 10. It just depended on
[17] what was going on. There was times, especially
[18] Christmas season, we'd get 3- or 400 orders, and
[19] those other reps would not do one of them, so it
[20] would fall back on Julie and I. It just depended
[21] on what was going on, you know, and what we were
[22] doing.
[23] Q: So there was some busy periods where you
[24] would stay until you said 9 or 10 at night?
[25] A: That's correct.

Page 175

Page 177

[1] employment ended?
[2] A: Yes.
[3] Q: And while you were working for
[4] Ms. Ingalls or Ms. Boschec, did you typically take
[5] a lunch break?
[6] A: No.
[7] Q: Did you not eat lunch, or did you just
[8] eat lunch at your desk?
[9] A: Normally not eat lunch, but sometimes I
[10] would eat at my desk while I worked.
[11] Q: When you did eat at your desk, did you
[12] bring lunch from home, or did you go out and get
[13] something?
[14] A: A little bit of both.
[15] Q: So you sometimes left the work site to
[16] get lunch?
[17] A: Normally I would have somebody go get
[18] it, somebody that was already making a food run.
[19] Q: Did you sometimes leave the work site
[20] yourself to get lunch?
[21] A: Sometimes I volunteered, yes.
[22] Q: When you left the work site for lunch,
[23] did you have to scan out?
[24] A: Yes.
[25] Q: Did you also have to scan back in when

[1] Q: Were there also some slow periods where
[2] you might leave at 4, 4:30, or 5?
[3] A: There was definitely some times,
[4] especially towards the end. They weren't going to
[5] squeeze any more blood out of me, and I was leaving
[6] on time.
[7] Q: So towards the end, that would have been
[8] when you were working for Ms. Boschec?
[9] A: That's correct.
[10] Q: Was there a typical time period that you
[11] left work for the day when you were working for
[12] Ms. Boschec, or did that also vary quite a bit?
[13] A: Say that again.
[14] Q: When you were working for Ms. Boschec,
[15] was there a typical time you would leave work for
[16] the day, or did it also vary quite a bit?
[17] A: Again, it just depends what time period
[18] I'm working for her. Of course when she first
[19] started, I was still gung ho doing what I was
[20] supposed to be doing and making things happen.
[21] At the end of February when I seen that
[22] my efforts were all for nothing, that's when I
[23] started saying, well, fine then, I'm cutting back.
[24] Q: And the amount of time that you worked
[25] for either Ms. Boschec or Ms. Ingalls and the



Page 49

[1] right?

A: That's correct.

[2] Q: And that was the company's policy during
[4] the time in which you worked there; isn't that
[5] correct?

[6] A: That's correct.

[7] Q: Did you comply with the requirements of
[8] this policy?

[9] A: No, I did not.

[10] Q: What requirements did you fail to comply
[11] with?

[12] A: Recording all time worked.

[13] Q: Anything else?

[14] A: Recording time off for meals.

[15] Q: Anything else?

[16] A: No, nothing else.

[17] Q: When did you fail to comply with the
[18] policy in regard to recording your time off for
[19] meals?

[20] A: I don't recall a specific date.

[21] Q: Do you recall a specific time period?

[22] A: The time that I worked at Micron PC.

[23] Q: Any particular month or week?

[24] A: The duration of my working at Micron PC
[25] prior to leaving for educational purposes.

Page 50

[1] Q: In what respect did you fail to comply
[2] with the policy by recording your time off for
[3] meals? What do you mean by that?

[4] A: I would eat lunch at my desk and work.

[5] Q: Did you eat your lunch at your desk
[6] every day?

[7] A: The majority.

[8] Q: Any particular days that you did that or
[9] did not do that?

[10] A: No particular days.

[11] Q: When you say you would eat lunch at your
[12] desk and work, what type of work would you perform
[13] while you would eat lunch?

[14] A: Creating quotes, responding to E-mails,
[15] sending E-mails, talking with customers.

[16] Q: When did you typically take your lunch
[17] break?

[18] A: It was random. When I was hungry.

[19] Q: Did you take other breaks during the
[20] day?

[21] A: Yes.

[22] Q: Any particular time in which you would
[23] take breaks?

[24] A: No.

[25] Q: When you were hungry or just when you

Page 51

[1] wanted a break?

[2] A: There would be times to get up and
[3] stretch, walk around, say hi to somebody.

[4] Q: Go to the break room?

[5] A: Sometimes.

[6] Q: Did you ever step out —

[7] A: Not usually.

[8] Q: Did you ever step outside for a break?

[9] A: Not usually.

[10] Q: Did you ever need to take a break to
[11] smoke or do some personal business?

[12] A: I do not smoke. Bathroom.

[13] Q: Bathroom breaks. Where would you
[14] typically take your breaks when you took them?

[15] A: At another friend's desk. Hallway

[16] talking. Bathroom. That would be the extent of
[17] it.

[18] Q: Break room?

[19] A: Sure.

[20] Q: You indicated the other circumstances in
[21] which you failed to comply with the company's
[22] policy on time-keeping was recording all of your
[23] time worked; is that right?

[24] A: Correct.

[25] Q: When did you not record the time you

Page 52

[1] worked?

[2] A: I would work more hours than I was
[3] scheduled to work.

[4] Q: When did you do that?

[5] A: The majority of the time. Quite often.

[6] Q: When were you scheduled to work?

[7] A: 8:00 to 4:00 — pardon me. 8:00 to 5:00
[8] with an hour lunch break.

[9] Q: Was that schedule consistent the entire
[10] time you were a small business rep?

[11] A: Yes.

[12] Q: You were never working or assigned to
[13] another shift?

[14] A: To my recollection, they began
[15] implementing three types of shifts based off of
[16] catering to different time zones. They all
[17] consisted of eight-hour shifts with an hour lunch.
[18] Excuse me. Yeah, eight-hour shifts with an hour
[19] lunch.

[20] Q: So at some point, though, there were
[21] three shifts to equate to the three different time
[22] zones?

[23] A: More or less.

[24] Q: Do you know when they made that change?

[25] A: To define making that change, it was an



1 firm.

2 Have you discussed this lawsuit with
3 anyone else aside from the lawyers?

4 A Yes.

5 Q Who?

6 A Todd Brinckerhoff.

7 Q Who's Todd Brinckerhoff?

8 A He used to work for Micron.

9 Q Do you know in what position and in what
10 department?

11 A Another ambiguous. I don't know. He had
12 several titles.

13 Q Okay. Did he work with you with
14 Mr. VanOrnum?

15 A For a time, yes.

16 Q Okay. Did you know whether he was
17 employed up through the end of -- well, September of
18 2000?

19 A Yes.

20 Q Has he filed -- Do you know whether he has
21 filed a consent to join this lawsuit?

22 A I'm not sure if he has or not.

23 Q Okay. The conversations that you had with
24 Mr. Brinckerhoff, did those occur outside the
25 presence of any attorneys?

1 A Yes.

2 Q What did you and Mr. Brinckerhoff discuss?

3 A I just wanted to know if he received the
4 letter and what he was going to do, if he remembered
5 any of that, and just surprise.

6 Q Surprised about what?

7 A It's been a long time.

8 Q What was Mr. Brinckerhoff's response?

9 A Kind of the same. Just surprised.

10 Q Do you remember any more detail about --
11 Was it just one conversation or more than one
12 conversation?

13 A Just one.

14 Q How long ago did this occur?

15 A A week and a half ago.

16 Q Okay. I'm sorry. Do you remember any
17 more detail about this conversation that you had
18 with Mr. Brinckerhoff?

19 A Not really.

20 Q How long was the conversation?

21 A Regarding this issue, maybe 10 minutes.

22 Q Okay. So no further discussions with
23 Mr. Brinckerhoff about the lawsuit?

24 A No.

25 Q Do you know Marilyn Craig or Jackie LaDon

1 (phonetic)?

2 MR. THOMAS: Hladun.

3 MR. TOLLEFSON: Hladun. Thank you, Bill.

4 A I know her.

5 Q (BY MR. TOLLEFSON) Okay. Did you ever --

6 Well, let's take them one by one. You know who
7 Mrs. -- Ms. Craig is?

8 A Yes, I do.

9 Q How do you know her?

10 A I knew her from working at Micron.

11 Q Okay. Was she ever on the same team that
12 you were on?

13 A Not on paper, no.

14 Q Okay. How about Ms. Hladun?

15 A I knew her as well. Not on the same team
16 on paper.

17 Q Okay. Have you had any discussions with
18 them about this lawsuit outside the presence of
19 counsel?

20 A No. I haven't seen them in four or five
21 years.

22 Q Okay.

23 MR. TOLLEFSON: I think I am done.

24 Do you have any questions?

25 MR. THOMAS: I may have.

1 (Whereupon, a short recess was taken.)

2 Q (BY MR. TOLLEFSON) Let me ask you one
3 more question about -- In the conversations that you
4 had with Mr. Brinckerhoff, did you discuss with him
5 at all what you were seeking to recover in this
6 lawsuit?

7 A No.

8 Q Okay.

9 MR. TOLLEFSON: Then I'll turn it over to
10 you.

11 MR. THOMAS: Would you give me a couple
12 minutes?

13 MR. TOLLEFSON: Sure.

14 (Whereupon, a short recess was taken.)

15 EXAMINATION

16 BY MR. THOMAS:

17 Q Ms. Saari, there's been some testimony on
18 your part about working through lunches, and I just
19 want to clarify, was that activity only through the
20 '97, '98 time period?

21 A No. It was all the way through my
22 employment.

23 Q Okay. So in the years from '99 to 2000
24 the company also brought in lunch?

25 A Yes. During that time period it was most

1 of the winter.

2 Q Okay. And typically what kind of lunches
3 would they bring in?

4 A Davanni's pizza, Eddington's soup. Very
5 high fat, greasy food so you could sit at your desk
6 all day.

7 Q Take a look at Exhibit 316.

8 A (Witness complies.)

9 Q Are you there?

10 A Yes.

11 Q How did you receive this document?

12 A It was given to me in my termination of
13 employment package.

14 Q Who gave this to you?

15 A Human resources.

16 Q Do you remember the person?

17 A I don't.

18 Q Was that person from Idaho that you talked
19 about?

20 A Yes.

21 Q Male?

22 A Yes.

23 Q Okay. And was this discussed during your
24 exit interview, which is part of --

25 A In not a lot of detail.

1 Q Did you have any questions about this?

2 A I did.

3 Q And did you ask the person that you were
4 talking to during the exit interview about this?

5 A I did, and I was informed that I had to
6 turn it in and I need to check the date on the
7 document. But it was less than two weeks that I had
8 to look it over, sign it and return it or I would be
9 dropped from my medical plan and not receive my
10 severance or final paycheck.

11 Q Okay. Did you understand this document?

12 A In general.

13 Q Okay. Did you seek any advice in terms of
14 getting -- understanding it further than what you
15 did already understand?

16 A Not really.

17 Q Okay. Did you see a lawyer?

18 A No.

19 Q Why didn't you see a lawyer?

20 A I couldn't afford one.

21 MR. THOMAS: Nothing further.

22 EXAMINATION

23 BY MR. TOLLEFSON:

24 Q Ms. Saari, on Exhibit 316 do you see on
25 the fourth page, second paragraph from the end,

1 where it says it has to be deposited in the mail and
2 postmarked no later than October 5th, 2000? Do you
3 see that?

4 A Yes.

5 Q Is that the date in which you had to
6 return the signed -- if you wanted to sign and
7 return the document, it had to be returned by?

8 A Yes.

9 Q Did you read the document before you
10 signed and returned it to Micron?

11 A Yes, I did.

12 Q Can you show me in the document where it
13 says that you will be dropped from your medical plan
14 if you didn't sign and return it?

15 A It doesn't say it specifically, but on the
16 last page, page 4, it says that basically if you
17 sign it, everything will be effective on the 16th
18 day after you've signed it. So in not signing it,
19 you could gather that your COBRA would kick in and
20 you will not receive your final paycheck or
21 benefits. And if you would like, we could take a
22 minute and I could find the exact wording.

23 Q Do you see on page 2, about the middle of
24 the page where it says your current Group Health
25 insurance coverage, parentheses, health, dental and

1 vision, will continue through November 30th of 2000?

2 Do you see that?

3 A Yes.

4 Q Do you see anything that says that, if you
5 don't sign this document, it won't continue through
6 November 30th of 2000?

7 A We could take a minute and I could find
8 something, if you'd like.

9 Q Sure, if you can find it for me in here.

10 A (Witness reviewing document.) Okay.

11 Q Okay.

12 A On page 2, the term towards the bottom of
13 the page, provided you do not revoke this
14 memorandum. Page 3, again, this is referring to
15 severance, provided you do not revoke. So on this
16 document and in my conversation with human
17 resources, by not signing this form or failing to
18 sign it in the time allowed, you were revoking your
19 right to claim your severance and benefits that went
20 with the severance package.

21 Q Do you understand that severance benefits
22 are different than health insurance benefits?

23 A Health insurance was explained to me in my
24 meeting as a part of my severance package.

25 Q Do you see that you were to sign and

1 accounts what I dealt with just kept moving upward
2 as far as dollar amount and prestige and things like
3 that, so --

4 Q Okay. And maybe I can -- I just wanted to
5 know if -- When you returned to work at this
6 commercial department position in 1999, so for the
7 one year that -- additional year that you remained
8 with Micron, for that year were your job duties and
9 responsibilities essentially the same from when you
10 came back in October of '99 through September of
11 2000? Just that time period.

12 A They increased during that time period.

13 Q Okay. And by increased, what are you
14 referring to?

15 A I sold parts and accessories. I sold
16 systems. Didn't just work with commercial clients,
17 so in some ways it was the same, in some ways it was
18 different.

19 Q So even after October of 1999, after that
20 date, you didn't just work with commercial clients?

21 A No.

22 Q Okay. You still continued to work with
23 government or state and local --

24 A Yes. I did that throughout my career at
25 Micron.

1 Q Okay. And, again, I'm trying to focus you
2 on the October of '99 through September of 2000 time
3 period. Did your -- Was your main focus still on
4 the parts, monitors, batteries, all those sorts of
5 things?

6 A Not exactly. Since there were fewer of us
7 after the layoff, the demand for our skills grew, so
8 we were utilized by everyone in the company.

9 Q Okay.

10 A And with those customers, a lot of times
11 the customers did not want to buy one thing from one
12 person and one thing from another person in a
13 department, so whoever you were working with, you
14 serviced them for everything that they needed.

15 Q Did you have an understanding as to
16 whether your job -- Again, I'm focusing on this
17 October '99 through September of 2000 time frame. --
18 your job as an additions sales representative was
19 different from others in the commercial department
20 who were inside sales representatives?

21 A Not exactly.

22 Q Okay.

23 A I had access to an additional database of
24 accessories, but I also had access to the same
25 database that they had, so there was an overlap.

1 Q Do you know whether -- Again, on this last
2 year time frame, do you know whether you had the
3 same commission plan that the inside sales
4 representatives in the commercial department had?

5 A I was supposed to. Whether or not I
6 actually did, I can't answer that, because it
7 changed so frequently.

8 Q Do you know who Rickey Ferrara was?

9 A I think so.

10 Q Do you know whether -- Do you recall him
11 being another inside -- well, him being an inside
12 sales representative in the commercial group?

13 A He was in sales. I know the name.

14 Q Okay. Was -- And I apologize if I already
15 asked you this. Was Mr. VanOrnum your supervisor
16 from October of '99 -- Did he remain your supervisor
17 from October of '99 through September of 2000?

18 A Yes.

19 Q Okay. Do you recall whether, when you
20 were laid off and then rehired, whether you were
21 rehired at a higher hourly rate?

22 A I don't recall the numbers. I'm assuming
23 so, but I don't recall the numbers.

24 Q Okay. I'm going to ask you specifically,
25 do you remember Mr. VanOrnum ever telling you

1 anything about how much overtime you were allowed to
2 work?

3 A Just that it wasn't going to be paid if we
4 worked it.

5 Q So during the October of '99 through
6 September of 2000 time frame, did you ever record
7 more than 40 hours per week?

8 A I don't recall.

9 Q Do you know whether, as an additions sales
10 representative in commercial, you had different --
11 different hourly limitations, different limitations
12 on hours that you could work than the inside sales
13 representatives in commercial?

14 A I wasn't aware that there was a
15 difference. I don't think that the -- Even the
16 customer service representatives worked overtime.

17 Q Do you remember Mr. VanOrnum specifically
18 saying that overtime wouldn't be paid if you worked
19 it, or do you remember him specifically using those
20 words?

21 A He always had a lot of catch phrases, and
22 one of them was take it for the team. And I don't
23 remember him specifically saying, do not record your
24 overtime, but it was understood that you were taking
25 it for the team and for the betterment of the

1 company, to increase production.

2 Q Did you ever hear Mr. VanOrnum say that
3 you could request to be approved to work additional
4 overtime hours?

5 A I don't remember.

6 Q Did you ever request -- Now I'm going to
7 ask about the entire duration of your employment at
8 Micron. Did you ever ask permission to get approval
9 to work additional overtime hours?

10 A Yes.

11 Q Which supervisors do you remember
12 requesting that permission with?

13 A I don't remember the specific supervisors,
14 and the requests for overtime were not always made
15 to the supervisor that you reported to on paper. It
16 could have been made to someone in Idaho. We had a
17 lot of contact with some of the supervisors in
18 Idaho, and it was whatever supervisor needed you.
19 If I was working on a contract with government, I
20 was working on an educational bid, sometimes you
21 talked to the supervisor of that department, so
22 those lines would cross and then that supervisor
23 could give you authorization. It didn't necessarily
24 need to come from your direct report.

25 Q And on those occasions when you did

1 Q Okay. Any other reasons?

2 A Not that I remember.

3 Q On the occasions when you did ask for
4 permission to work overtime hours, do you remember
5 whether, on those occasions, you recorded the
6 overtime hours that you worked?

7 A Sometimes I did and sometimes I didn't.

8 Q And on the occasions when you did not, why
9 did you not record them?

10 A Because I knew they would not be
11 compensated hourly.

12 Q Were there ever any occasions when you
13 recorded overtime hours on the timekeeping system
14 and then you were not paid for the hours that you
15 recorded?

16 A I don't remember.

17 Q Do you have any recollection of an
18 instance where you recorded time on the timekeeping
19 system and you were not paid for all the time that
20 you recorded?

21 A I don't recall.

22 Q Do you have any reason to believe that
23 there was ever an instance when you recorded time on
24 the timekeeping system and you were not paid for all
25 the time that you recorded?

1 request permission to work overtime hours, were the
2 requests ever denied?

3 A No one ever told me not to work overtime.
4 It was usually different from a compensation
5 standpoint. Of course they wanted the work done.

6 Q On those occasions when you asked a
7 supervisor permission, did you ever ask a supervisor
8 for permission to record additional overtime hours?

9 A I don't think that I did, because the
10 expectation, in this period of time, was that it
11 wasn't going to be paid. Early on it was recorded,
12 and whether it was paid or not, I don't remember.
13 But there was a period of time when it was worked
14 and not compensated.

15 Q Did you, on -- When you were saying -- You
16 said -- You testified earlier that there were
17 occasions that you asked permission for approval to
18 work overtime hours; is that correct?

19 A Yes.

20 Q Why would you ask for that permission on
21 those occasions?

22 A A couple of times because it would require
23 coming in on weekends, and because of the nature of
24 the security of the building, I wanted to make sure
25 that that was okay.

1 MR. THOMAS: Object to the form of the
2 question.

3 Answer.

4 A Could you repeat the question?

5 Q (BY MR. TOLLEFSON) Sure. Just so you
6 know, too. Mr. Thomas can correct this. From time
7 to time he may object to a question that I ask.
8 Just let him finish and state everything he's got to
9 say, and then unless he specifically tells you not
10 to answer the question, you have to go ahead and
11 answer the question. But I'm always happy to repeat
12 it, too, if the objection is really long.

13 And I'll go ahead and state the question
14 again. Do you have any reason to believe that there
15 was ever an instance when you recorded time on the
16 timekeeping system and you were not paid for all the
17 time that you recorded?

18 MR. THOMAS: Object to the form.

19 A Can I repeat the question back to you to
20 make sure I understand it?

21 Q (BY MR. TOLLEFSON) Sure.

22 A Do I have a reason to believe that I
23 entered time in correctly and was not compensated
24 for it?

25 Q Yes.



Page 37

Page 39

1 during lunch, who would request that?

2 A It would be a supervisor.

3 Q Okay. Do you remember a particular
4 supervisor doing that?

5 A It could have been any of the three.

6 Q Okay. And, again, during those occasions
7 in consumer and small business when you were asked
8 to stay at your desk during lunch and take calls,
9 did you -- on those specific occasions did you
10 record that time as time worked?

11 A I do not recall. The only thing I can
12 recall is we still took -- If I worked five days, we
13 took five hours of lunches. I don't recall
14 recording time worked during that.

15 Q On those occasions in consumer and small
16 business when your supervisor would ask you to stay
17 at your desk during lunch, do you remember the
18 supervisor ever saying anything about what you were
19 supposed to do with regards to recording your time?

20 A I do not recall.

21 Q I want to make sure I'm clear. Your
22 testimony a moment ago when I asked you on these
23 specific occasions when you were asked to stay at
24 your desk did you record the time as time worked,
25 your first answer was, I do not recall. Do you know

1 busier, and when the call volume is up and they knew
2 the call volume would be up, or right after the
3 running of an ad, they knew the call volume would be
4 up, the company would actually buy lunch, pizza,
5 stuff like that. Eat at your desk today 'cause
6 we're going to have a lot of calls. So it wasn't
7 like every day, but I know as you got closer to the
8 holidays and such that would happen.

9 Q Okay. Did you ever talk to any -- How
10 many other people in consumer and small business do
11 you recall were on your sales team?

12 A How many?

13 Q Yes.

14 A I only could guess. Maybe 12.

15 Q Did you ever talk to any of the other
16 people on your team about how they recorded their
17 time?

18 A Never did.

19 Q Do you ever recall any discussions with
20 anyone at Micron about how to record your time
21 during a lunch hour?

22 MR. WILLIAMS: Other than what he's
23 already testified about.

24 A The only thing I know is -- was that hour.
25 Always make sure you put an hour in for lunch.

Page 38

Page 40

1 whether or not -- On those occasions when you were
2 asked specifically to stay at your desk, do you know
3 whether or not you might have recorded some of that
4 time as time worked?

5 MR. WILLIAMS: Object to the form.

6 A I don't remember how it was recorded. The
7 only thing I remember is, I always recorded an hour
8 for lunch. That's all I can remember.

9 Q (BY MR. TOLLEFSON) So for the period that
10 you were in consumer and small business from
11 September 28th of 1998 until approximately
12 September 24th of '99, do you have any approximation
13 as to on how many occasions your supervisor asked
14 you to stay at your desk and not leave during the
15 lunch hour?

16 A How many times?

17 Q Yes.

18 A I could not give you an accurate number of
19 that.

20 Q Okay. Can you tell me whether -- Did it
21 happen on a monthly basis or a weekly basis or
22 quarterly basis? Do you have some sense on that
23 scale?

24 A It would -- It would be kind of a hit and
25 miss thing. Getting closer to the holidays you get

1 Q (BY MR. TOLLEFSON) Sorry. I should have
2 been more clear on my question. Do you ever recall
3 any discussions with any of your coworkers at Micron
4 about how to record your time during the lunch hour?

5 A No.

6 MR. TOLLEFSON: Should we take a break?

7 MR. WILLIAMS: Sure.

8 (Whereupon, a short recess was taken.)

9 Q (BY MR. TOLLEFSON) Mr. Kestner, did you
10 ever do any work from your house?

11 A No.

12 MR. TOLLEFSON: Let's go ahead and mark
13 this.

14 EXHIBITS:

15 (Deposition Exhibit No. 311 marked for
16 identification.)

17 Q (BY MR. TOLLEFSON) Mr. Kestner, do you
18 recall earlier when we were looking at the documents
19 that you brought with you there was -- in the
20 notification letter it discussed a payment of \$3500?

21 A Yes.

22 Q And you told me that you had received that
23 payment?

24 A Yes.

25 Q Have you -- Did you return the payment or



Page 25

Page 27

1 MR. TOLLEFSON: Sorry. Effective date.

2 You have to go over to when --

3 MR. WILLIAMS: I see.

4 A 10/99. Okay.

5 MR. WILLIAMS: What's the pending

6 question? Has he seen it before?

7 MR. TOLLEFSON: I was trying to let him
8 know what the document's date was. There was
9 actually not a pending question.

10 MR. WILLIAMS: Okay. Wait for a question.

11 Q (BY MR. TOLLEFSON) Is this October of '99
12 time frame, would that have been when your job
13 changed from consumer over to commercial?

14 A That looks about the right time, yeah.

15 Q Do you see on this document where it
16 reflects a base pay of 12 dollars and 26 cents?

17 A I do.

18 Q Does that sound familiar or -- I mean, do
19 you have any reason to believe that was not your
20 hourly wage beginning in October of 1999?

21 A I've never seen that pay scale before,
22 that I can recall.

23 Q Was Rick VanOrnum the only supervisor you
24 had while you were in the commercial group?

25 A Yes, sir.

Page 26

1 Q Do you remember, when you switched from
2 consumer to commercial, whether you did start making
3 more money per hour?

4 A At first I switched from consumer to small
5 business with no increase. Then I was let go. When
6 they pulled me back, they renegotiated the contract,
7 and it was always a salary, not an hourly wage.
8 There was never any form showed me with any hourly
9 wage on it. If you want to boil it down that way,
10 maybe it was, but I didn't see it.

11 Q On your paycheck there, Exhibit 301, did
12 you ever take the number of hours you worked per
13 week and divide it by the total number of pay that
14 you got?

15 A Every week.

16 Q And do you remember what it came out to?

17 A Off the top of my head, \$11 an hour. I
18 always check everything 'cause I like doing it.

19 Q Let's go back, Mr. Ferrara, to the issue
20 we were discussing before about how you would
21 double-check the hours that you were paid with your
22 own handwritten notes. Did you do that for the
23 entire duration of your employment at Micron?

24 A Well, when I was in consumer I made \$11 an
25 hour, and I checked it always. When I was in

1 commercial I really didn't check it all that much.

2 This is a commercial receipt here. I went by what
3 they were paying me, and then we had a million
4 little things that they brought into it, so it was
5 really hard, so that's why I gave up on it.

6 Q So at some point you gave up on keeping a
7 separate handwritten record of what you had
8 submitted as far as time worked?

9 A No. I always kept track of that. That's
10 a golden rule with me, how they paid me, 'cause the
11 commission structure changed constantly. And then
12 the hourly wages, I submitted my hourly wages every
13 two weeks, just like I always did, and I wrote them
14 down. I always had disagreements with them, of
15 course.

16 Q So when you recorded the hourly wages that
17 you had worked, did you always accurately record the
18 time that you'd worked on the timekeeping system?

19 A On my end, yes.

20 Q Okay. Let's go through your -- With
21 regard to your supervisors, do you ever remember any
22 specific conversations that you had with
23 Mr. VanOrnum about your claim that you weren't being
24 paid for all the hours that you submitted?

25 A Yes.

Page 28

1 Q Could you tell me about what specific
2 conversations you recall?

3 A Well, I would do my submitting, and if I
4 felt there was more than an hour disagreement I
5 would confront him, and he'd say, you know, you
6 can't go more than 47, and I'd say, okay, and he
7 would say, just remember that. And that was a
8 golden rule of his. But there's times I worked 50
9 hours, and, you know, I valued my job and I didn't
10 want to get fired again or laid off again, you know?

11 Q So on the occasions when you worked 50
12 hours in a given work week, would you still
13 accurately record that you had worked those 50
14 hours?

15 A Well, sometimes it would be 50 hours one
16 week and like 46 the other, and I would turn in 96,
17 or if I worked 48 it would be 98, and they never
18 matched what I turned in. It matched what they
19 wanted to put down.

20 Q What about when Jim Sou was your
21 supervisor? Do you remember any specific
22 conversations you had with Mr. Sou about this issue?

23 A Not really, no. I did question him one
24 time when they made us stay through and eat pizza
25 all the time for lunch, if that was something we had

Page 33

Page 36

[1] Q: Okay. Do you remember, did your
[2] paycheck include hourly pay commissions, any SPIFFs
[3] or bonuses? Were there various categories of pay
[4] set out on your paystubs?

[5] A: There was hourly pay, and then I believe
[6] there was a second check for commission. I don't
[7] recall that.

[8] Q: Was part of the concern that you
[9] expressed to Mr. Brandon, which you were just
[10] telling me, that you didn't have a record of what
[11] you had submitted?

[12] A: Yes. I was concerned that I was working
[13] some overtime and, on one hand I was being told by
[14] my supervisor to get the job done, and on the other
[15] hand they didn't want us working overtime. So
[16] mixed messages from management.

[17] Q: And when you say your supervisor, are
[18] you still referring to Mr. Brandon?

[19] A: Yes.

[20] Q: But do you have any reason to believe
[21] that for the time you did submit on this — for the
[22] time that you did submit, do you have any reason to
[23] believe that you weren't paid for all the time you
[24] did submit?

[25] A: Possibly. I have reason to believe

Page 34

[1] possibly that that's the case.

[2] Q: And why is that?

[3] A: Because I have no record, hard copy, of
[4] what was actually submitted then to the
[5] organization. The management would change or
[6] submit that to the company.

[7] Q: What do you mean — explain to me what
[8] you mean by the "management would change"?

[9] A: My immediate supervisor would allow me
[10] to submit those hours, and then they would submit
[11] those to human resources or wherever that went.

[12] Q: Do you have any reason to believe that
[13] your supervisor changed the time that you had
[14] submitted before they forwarded it on to someone
[15] else?

[16] A: Possibly.

[17] Q: And what reason would that be?

[18] A: We were only supposed to work the hours,
[19] you know, 8 to 5 or — the hours.

[20] Q: But do you have knowledge of any facts
[21] that any supervisors altered your time for the
[22] purpose of diminishing overtime before they
[23] forwarded your hours on?

[24] A: I have no facts.

[25] Q: Did you ever write down — let's back up

[1] a little bit. Did you submit your time using the
[2] VAX system?

[3] A: I believe so.

[4] Q: Did you also later use what's called the
[5] me@micronpc? Does that sound familiar?

[6] A: I believe so.

[7] Q: I'm going to show you what's been
[8] previously marked as Defendant's Exhibit *006 in
[9] this case. Go ahead and turn to the second page.
[10] Do you see paragraph 2 on that second page? It's
[11] towards the top.

[12] A: Yes, I do.

[13] Q: That kind of box, large box under
[14] paragraph 2, does that look familiar?

[15] A: Yes.

[16] Q: Do you remember using this —

[17] A: Yes.

[18] Q: — sort of a timekeeping system where
[19] you put in a start time and a stop time?

[20] A: Yes.

[21] Q: Did you use this system the whole time
[22] you were at Micron, or did you use a different
[23] system at an earlier point?

[24] A: I don't remember.

[25] Q: But you do remember using this?

Page 36

[1] A: Changing at times I believe.

[2] Q: Do you see at the top, paragraph 1,
[3] where it says "from the me@micronpc.com main menu,
[4] click Timesheet"?

[5] A: I see that.

[6] Q: "The Timecard Summary page appears with
[7] a list of timesheet dates"?

[8] A: I see that.

[9] Q: Do you remember accessing timesheets in
[10] that manner?

[11] A: I don't remember.

[12] Q: Okay. But you did know how to go in and
[13] put in a start time and a stop time for your time
[14] that you worked?

[15] A: I don't exactly remember.

[16] Q: Okay. Do you see towards kind of the
[17] bottom part of the box where it says "submit for
[18] approval," that looks like you click on?

[19] A: Yes, I do see that.

[20] Q: Do you remember doing that? Is that
[21] what you were talking about submitting it for
[22] approval?

[23] A: Yes.

[24] Q: And at that point you believe that the
[25] timesheet would go on to whoever was your immediate



Page 52

1 MR. WILLIAMS: Object to the form. Go ahead.
2 THE WITNESS: I don't know if they did anything
3 wrong. I mean, if they miscalculated, that could be a
4 mistake.
5 Q. BY MR. DOCKSTADER: Anything else?
6 MR. WILLIAMS: Same objection. Go ahead.
7 THE WITNESS: I felt like I didn't care about
8 working extra hours and not putting them on my time
9 because, you know, management allowed it and also,
10 because I was there for the commission. But what I was
11 told was that -- I don't know, Jay or somebody, one of
12 the employees told me that you might as well join just
13 because there might be a miscalculation. Even if you get
14 a penny, you might as well get a penny. I'm not really
15 here for the overtime part of it. As I told you, I was
16 in there for the commission.
17 Q. BY MR. DOCKSTADER: Who's choice was it not
18 to record the extra hours that you're talking about?
19 MR. WILLIAMS: Object to the form. Go ahead.
20 THE WITNESS: Well, it was my choice, although
21 management -- everybody was doing it. Management allowed
22 everybody -- there was guys there -- sometimes I even
23 stayed there until 9, 10 o'clock at night. There was a
24 lot of people who worked a lot of extra hours, and there
25 was sometimes when we could actually record that. But

Page 53

1 then they started cutting back on that, you know.
2 I don't know about the other managers, but my
3 manager at the time said, hey -- I told him, hey, I'm
4 here -- it's like my own business. I'm just here for the
5 commission. And basically they said, well, if you want
6 to work extra to get some more leads to call for
7 tomorrow, whatever, go ahead. But we're only allowed to
8 work, you know, 45 hours or whatever right now.
9 But that didn't matter to me because, again, we
10 were there for the commission, not for the hourly wage.
11 Q. BY MR. DOCKSTADER: There were times when you
12 recorded the overtime and were paid for overtime?
13 A. Yes.
14 Q. And there were times when you believe you
15 worked extra hours and you didn't record them?
16 A. Yes.
17 Q. Do you have any knowledge of the total amount
18 of overtime hours that you worked for Micron PC between
19 October of 1999 and May 31 of 2001?
20 A. The total amount of overtime hours?
21 Q. Yes. Do you have any understanding of that?
22 MR. WILLIAMS: Object to the form. Go ahead.
23 THE WITNESS: I do not remember the total amount,
24 but I could probably try to calculate it out.
25 Q. BY MR. DOCKSTADER: How would you do that?

Page 54

1 A. Well, I asked my wife about it recently --
2 and I hate to bring her into this. But I said, what --
3 because I felt like I'd worked maybe one or two hours
4 extra every night after. Some of that time, I probably
5 logged that because they allowed it. But she says, you
6 know, you worked at least two hours every night overtime,
7 extra, beyond, so.
8 Why'd I bring my wife into this?
9 Q. Any other basis you would use other than
10 relying on your wife?
11 A. Okay. My own memory was one to two hours,
12 and I will say my own memory also says there were many
13 nights I worked until 7, 8, 9 o'clock or later once in a
14 while.
15 Q. What is your understanding of -- during this
16 time period, October '99 through May 2001, what is your
17 understanding of what constituted overtime hours?
18 A. My understanding is over 8 hours a day or 40
19 hours per week.
20 Q. Was that your understanding during that time
21 frame?
22 A. Yes.
23 Q. So that I understand what you're telling me,
24 when you say one to two hours, are you saying one to two
25 hours per week or one to two hours per day?

Page 55

1 A. Well, I rarely took a lunch because I felt
2 like it was my own business. So there was a period of
3 time where I could record that I didn't take a lunch, and
4 there was a period of time where I -- I don't remember,
5 but I may have always recorded that I didn't take a
6 lunch, but I don't remember.
7 But that would go up to 45 hours, so then --
8 I'm sorry. What was the question again? Okay. The one
9 to two hours? What was the question again?
10 Q. My question was, I was trying to understand
11 when you said one to two hours, was that one to two hours
12 per week overtime or one to two hours per day you worked
13 overtime?
14 A. So I rarely took a lunch. Most of the time I
15 didn't take a lunch, so that would constitute five hours.
16 And the one to two hours that I was referring to was
17 staying late after work per day. There were some days
18 that I'd actually get off on time, you know, if we had
19 plans that night or something.
20 You know, schedules varied, but most of the time
21 I would stay to try to work extra to get more commissions
22 to feed the family.
23 Q. So if I understand what you're saying, the
24 one to two hours was in reference to one to two hours a
25 day staying after your shift; is that right?

16



Page 28

1 is it that at certain times you recorded it
2 accurately and other times you did not?
3 A. Well, there were periods of time when
4 we weren't allowed to work any overtime. But the
5 job required that we put in more time to get
6 everything completed.
7 Q. But you could choose to accurately
8 record your time or not. Correct?
9 A. No. Because we weren't supposed to be
10 working any overtime.
11 Q. But you went ahead and worked it
12 anyway.
13 A. That's correct.
14 Q. And on those occasions, you chose not
15 to put your time down.
16 A. That's correct. And like I said, a lot
17 of it was recorded for us.
18 Q. During the time period that you were at
19 the Meridian site?
20 A. Correct.
21 Q. Are you aware that there were employees
22 who did record their time while they were at the
23 Meridian site?
24 A. Not in my group, there wasn't.
25 Q. But in other groups, that's what they

Page 29

1 did. Correct?
2 A. I don't know for sure.
3 Q. Do you believe that's the case?
4 A. I don't know.
5 Q. Was there something different about
6 your group?
7 A. Well, I always thought so, yeah.
8 Q. Tell me what was different about your
9 group.
10 A. That we had Dave Howarth as a
11 supervisor.
12 Q. There was lots of different
13 supervisors. Having a different supervisor isn't
14 unusual. Why do you think that that's different?
15 A. Because he ran a different ship than
16 the other supervisors did.
17 Q. How so?
18 A. Very authoritative. That's why I
19 believe that he filled out the time sheets for us.
20 Q. Do you know whether he filled out the
21 time sheets correctly or not?
22 A. I believe he put them for 40 hours a
23 week.
24 Q. Did you ever check to see if that was
25 the case or not?

Page 30

1 A. I did not.
2 Q. Would you be surprised to find out that
3 there was overtime recorded during the period of
4 time that you worked at the Meridian site?
5 A. I would be, yes.
6 Q. But while you were there, you never
7 checked to see whether or not it was recorded.
8 Correct?
9 A. That's correct.
10 Q. Wasn't it important to you at that
11 time?
12 A. As a sales rep, I always felt like we
13 worked for our commissions more than the hourly
14 wage, so it wasn't as important.
15 Q. Did you ever express any concern to
16 anyone about Dave Howarth filling in your time for
17 you?
18 A. To management, you mean?
19 Q. Yes.
20 A. I don't believe I did, no.
21 Q. Did you ever express concern to
22 Mr. Howarth?
23 A. I did not.
24 Q. Did you ever express concern to
25 Mr. Howarth's boss?

Page 31

1 A. I did not.
2 Q. Did you ever express concern to human
3 resources?
4 A. Not to my knowledge, no.
5 Q. Was it your understanding during this
6 time that company policy required employees to
7 keep track of their own time on the computerized
8 system?
9 A. I was not aware of that either.
10 Q. How did you know about it when you were
11 putting it on the VAX, then?
12 A. We're talking about when we were in
13 Nampa?
14 Q. Yes.
15 A. That was the procedure then.
16 Q. And the procedure changed for you when
17 you went to Meridian?
18 A. Yes.
19 Q. Did you work for Dave Howarth at the
20 Nampa site?
21 A. I did. From '94, he was my first
22 supervisor for a couple years. And then I
23 transferred and worked for Dahlberg, and Howarth
24 wasn't involved for a couple years and then I came
25 back to work for him.



00062

1 authorized, and I asked you to specifically tell me a
2 time when you believed it wasn't authorized. And you
3 said on those times when you were an outside rep and you
4 were flying to a location or traveling to a location, you
5 were only allowed to put eight hours in, is what you
6 said; correct?

7 A. Yes.

8 Q. Was there any other period of time when you
9 were not authorized, as far as you know, to put in
10 overtime?

11 A. Yes.

12 Q. When?

13 A. With your question, are you looking at exact
14 days, dates, or -- I don't understand.

15 Q. Circumstances.

16 A. Circumstances. I consistently worked a lot
17 of hours per week, and when overtime was passed down that
18 it wasn't being paid through the company, my immediate
19 supervisor, being Jay Ellis, knew I needed to get more
20 hours in. And he would tell me how many hours of
21 overtime he could pay me. And if I couldn't get the job
22 done in those amount of hours, it was pretty much
23 insinuated that that's all I can sign in for you.

24 Q. Did you have to get approval to work overtime
25 under company policy?



Page 291

- [1] Q: In fact, it was your responsibility to
[2] accurately record all of the time you worked.
[3] Isn't that right?
[4] A: Yes.
[5] Q: And if your supervisor reviewed your
[6] timesheet, shouldn't he be able to assume it was
[7] accurate?
[8] MR. WILLIAMS: Object to the form.
[9] THE WITNESS: No.
[10] Q: BY MR. DOCKSTADER: Shouldn't your
[11] supervisor be able to assume that before you had
[12] submitted your timesheet that you had reviewed it
[13] to assure that it was accurate?
[14] A: No.
[15] Q: Isn't that what the policy requires?
[16] A: That I review it? Yes.
[17] Q: And that you verify that it's accurate
[18] before you submit it. Correct?
[19] A: Yes.
[20] Q: So why is it that your supervisor
[21] shouldn't be able to assume that the timesheet you
[22] submitted had been verified and was accurate?
[23] A: If I worked until 7:00, 8:00 at night,
[24] and he was there until 6:00 or 7:00, and my
[25] timecard said 8:00 to 5:00, he obviously knew there

Page 292

- [1] were two hours omitted. And he also saw me working
[2] through lunches, and yet I showed a lunch.
[3] Q: BY MR. DOCKSTADER: So you're saying
[4] that you believe your supervisors, in addition to
[5] everything else they have to do, they should be
[6] monitoring what you do with your time every day?
[7] MR. WILLIAMS: Object to the form.
[8] THE WITNESS: Monitoring what I do with my
[9] time every day? I would have to say yes.
[10] Q: BY MR. DOCKSTADER: If they see you
[11] there working, shouldn't they be able to assume
[12] you're reporting that time?
[13] A: I don't see why.
[14] Q: Isn't that the responsibility you hold
[15] under the company's policy?
[16] MR. WILLIAMS: Object to the form.
[17] THE WITNESS: Under the policy, yes.
[18] Q: BY MR. DOCKSTADER: Didn't you, in fact,
[19] record overtime on numerous occasions during the
[20] Micron PC employment period?
[21] A: Yes.
[22] Q: So if you elected to record two or three
[23] hours here or there every other week or so, how
[24] would your supervisor know?
[25] MR. WILLIAMS: Object to the form.

Page 293

- [1] THE WITNESS: If he knew that I was working
[2] through my lunches, that's pretty obvious to see.
[3] In the evenings, working late, he could, if he
[4] really wanted to, go in and run a call log report
[5] and find out how late I had worked. There was a
[6] number of ways he could have very easily figured it
[7] out.
[8] Q: What other ways? You say there's a
[9] number of ways.
[10] A: When I logged on and off of my computer,
[11] if it was turned off or on; the timesheet itself; a
[12] call log report would be a fairly good indicator; a
[13] batch scan for the week, although that is
[14] questionable just because of people herding in and
[15] herding out you don't always get a batch scan.
[16] Q: Anything else?
[17] A: Not that I can think of right now.
[18] Q: So you're saying log on and log off the
[19] computer, right?
[20] A: Yes.
[21] Q: Call log report?
[22] A: Yes.
[23] Q: Timesheet?
[24] A: Yes.
[25] Q: Batch scan for the week?

Page 294

- [1] A: Yes.
[2] Q: So is it your testimony that the
[3] supervisor should go through each week and compare
[4] the timesheet that you submit with all these
[5] various sources to see if it's correct?
[6] A: What I'm saying is that Jaime, in
[7] particular, liked to know precisely when we clocked
[8] in. And I'm using that as a term — clocked wasn't
[9] quite the most accurate word. But when we arrived,
[10] he was pretty particular about that. And so Jaime
[11] would more than likely, or should have been able to
[12] check on when we had left as well. Especially when
[13] somebody shows six, seven hours of talk time, you
[14] know that somebody hasn't been there just eight
[15] hours.
[16] Q: Do you have any understanding of what a
[17] supervisor typically had to do in terms of
[18] reviewing timesheets?
[19] A: As far as I'm aware — what he had to
[20] do? He looked at the computer and submitted it.
[21] Q: And that would occur on what basis?
[22] A: I don't understand the question.
[23] Q: When would that occur?
[24] A: Whenever they got to it. I don't know
[25] when.